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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

~~No. 392.~~ 121

W. M. QUIMBY AND J. S. BOON, PLAINTIFFS IN ERROR,

vs.

J. SCOTT BOYD, JR., RICHARD T. HAINES, JUDSON BENT, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

FILED OCTOBER 14, 1885.

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1 *Assignment of Errors.*

In the Supreme Court of the United States.

W. M. QUIMBY *et al.*, Plaintiffs in Error,
vs.
J. SCOTT BOYD *et al.*, Defendants in Error.

Now come the said plaintiffs in error, W. M. Quimby and John S. Boon, and say that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

The court erred in holding and deciding that under section 2324 of the Revised Statutes of the United States the record of the plaintiffs' mining claim (to wit, the alleged claim of the defendants
2 in error) was sufficient in its reference to a tree as a proper natural object by which to identify the claim.

II.

The court erred in holding and deciding that the record of plaintiffs' mining claim, three hundred feet wide by fifteen hundred feet in length, was valid without reference to the vein or its relative position to the boundaries.

III.

The court erred in holding and deciding that the plaintiffs' (defendants in error) grantor, in marking the boundaries of the claim known as the "Paymaster," might, in the Monarch mining district, Chaffee county, Colorado, where claims are limited to one
3 hundred and fifty feet on each side of the centre of the vein, take thirty-three feet on one side and make up for the deficiency by taking two hundred and sixty-seven feet on the other side.

IV.

The court erred in holding and deciding that the annual labor performed by plaintiffs (defendants in error) on their alleged claim for the year A. D. 1880 should not be measured by its actual value when done, but by a speculative value in advance.

V.

That by the record aforesaid it appears that the judgment aforesaid given was given for the defendants in error, whereas it
4 ought to have been given for the plaintiffs in error, and therefore they, the said W. M. Quimby and John S. Boon, plaintiffs in error, pray that the judgment aforesaid may be reversed, annulled, and held for naught, and that they may be restored to all

things which they have lost by reason of the said judgment, and for costs laid out and expended in this behalf.

W. J. SHARMAN,
Attorney for Plaintiffs in Error.

THEODORE H. THOMAS,
Of Counsel.

5 [Endorsed:] In Supreme Court United States. W. M. Quimby *et al. vs.* J. Scott Boyd *et al.* Assignment of errors. W. J. Sharman, att'y for pl'ffs in error.

6 In the Supreme Court of the United States.

W. M. QUIMBY and J. S. BOON, Plaintiffs in Error,
vs.
J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder, Defendants in Error.

The United States of America to J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Colorado, wherein W. M. Quimby and J. S. Boon are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error men-
7 tioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Wilbur F. Stone, acting chief justice of the supreme court of the State of Colorado, under and by virtue of section 8 of article IV of the constitution of said State, Chief Justice William E. Beck being absent from the State, this 24th day of August, in the year of our Lord one thousand eight hundred and eighty-five.

WILBUR F. STONE,
Acting Chief Justice of Supreme Court of Colorado.

I hereby aeknowledge service of a true copy of the above citation this 29th day of August, A. D. 1885, same having been served by W. J. Sharman, Esq., attorney of record for the plaintiffs in error.

C. S. THOMAS &
MARKHAM, PATTERSON, THOMAS & LYLES,
Att'ys for Def'ts in Error.

8 [Endorsed:] In the Supreme Court of the United States. W. M. Quimby *et al.*, pl'ffs in error, *vs.* J. Scott Boyd, Jr., *et al.*, def'ts in error. Citation.

[Stamped:] Filed in supreme court Aug. 24, 1885. James A. Miller, clerk.

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Colorado, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Colorado before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder and W. M. Quimby and J. S. Boon, wherein a title, right, privilege, and certain rights, titles, and privileges were claimed under a statute and certain statutes of the United States, and the decision was against the title, right, and privilege and the titles, rights, and privileges specially set up and claimed under such statute or statutes, a manifest error hath happened, to the great damage of the said W. M. Quimby and J. S. Boon, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to
10 be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the 110th year.

[Seal United States Circuit Court, District of Colorado.]

EDWARD F. BISHOP,
Clerk Circuit Court U. S., District of Colorado.

11 STATE OF COLORADO, *ss:*

In obedience to the mandate of the foregoing writ I, James A. Miller, clerk of the supreme court of the State of Colorado, do herewith transmit to the Honorable the Supreme Court of the United States a true and complete transcript of the record and proceedings

had in the case of W. M. Quimby *et al.*, appellants, *vs.* J. Scott Boyd Jr., *et al.*, appellees, as fully as the same remains on file and of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said Supreme Court, at my office, in the city of Denver, this 5th day of October, A. D. 1885.

[Seal Supreme Court, State of Colorado.]

JAMES A. MILLER,
Clerk Supreme Court, State of Colorado.

12 [Endorsed:] No. 1160. In supreme court, State of Colorado. W. M. Quimby *et al.*, pl'ffs in error, *vs.* J. Scott Boyd *et al.*, def'ts in error. Writ of error. W. J. Sharman, att'y for pl'ffs in error.

[Stamped:] Filed in supreme court July 18, 1885. James A. Miller, clerk.

13 Pleas before the honorable the supreme court of the State of Colorado.

14 STATE OF COLORADO, *ss:*

Be it remembered that heretofore and on, to wit, the 3d day of April, A. D., 1883, came the appellants, W. M. Quimby and J. S. Boon, by their attorney, W. J. Sharman, Esq., and filed in the office of the clerk of the supreme court of the State of Colorado a duly certified transcript of the record and proceedings of a certain cause, lately pending in the district court of El Paso county and State aforesaid, wherein J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Hanson W. Hendricks, Henry D. Cooke, Jr., Alexander Magruder were plaintiffs and W. M. Quimby, J. S. Boon, and Jacob Welch were defendants, and which said cause was brought into said supreme court upon appeal from the judgment of said district court entered in said cause, and which said transcript of record and their assignments of error appended thereto are, respectively, in words and figures following, to wit:

15 UNITED STATES OF AMERICA:

STATE OF COLORADO, } *ss:*
El Paso County, }

In District Court. November Term, A. D. 1882.

Pleas before the Honorable Joseph C. Helm, judge of the district court of the fourth judicial district of the State of Colorado and sole presiding judge of the district court of El Paso county, in the State aforesaid, and at a term thereof begun and held at the courthouse, in the city of Colorada Springs, in said county, on the first Monday (being the sixth day) of November, in the year of our Lord

one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and seventh.

Present: Honorable Joseph C. Helm, judge of the dist. court of the 4th jud'l distr. in the State of Colorado; C. C. Holbrook, district attorney; L. C. Dana, sheriff.

Attest: J. E. McINTYRE, *Clerk.*

Be it remembered that heretofore and on, to wit, October 10th, A. D. 1882, there was filed in said court a transcript of proceedings in the case of J. Scott Boyd *et al. vs.* W. M. Quimby *et al.* from the district court of Chaffee county, said district and State, and in said transcript there were (*inter alia*) the following:

Summons.

16 STATE OF COLORADO, } ss:
County of Chaffee, }

In the District Court of said County, in the Fourth Judicial District of Colorado.

J. SCOTT BOYD, Jr.; RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder, Plaintiffs,

against

W. M. QUIMBY, J. S. BOONE, and JACOB, WELCH, Defendants.

The people of the State of Colorado send greeting to W. M. Quimby, J. S. Boone, and Jacob Welch, defendants above named:

You are hereby required to appear in an action brought against you by the above-named plaintiffs in the district court of the fourth judicial district of the State of Colorado in and for the county of Chaffee and to answer the complaint filed therein within ten days (exclusive of the day of service) after service on you of this summons, if served within this county, or if served out of this county, but in this district, within twenty days; otherwise with forty days, or judgment by default will be taken against you according to the prayer of the complaint.

17 The said action is brought to recover the possession of the lode mining claim known as "The Paymaster lode," situate in the Monarch mining district, in Chaffee county, Colorado, and for the sum of one thousand ($1,000.00) dollars damages and the costs of suit, and for a writ of injunction restraining said defendants from working, mining, extracting, disposing of, or removing ore or mineral from said claim or from selling or removing or disposing of any ore or mineral already mined therefrom, be the same on the premises or otherwise; also for a mandatory writ of injunction, having the effect of a writ of restitution, restoring the plaintiffs to the possession of the said lode mining claim, as will more fully appear by the complaint on file herein, to which reference is here made; and you are hereby notified that if you fail to appear and answer

the said complaint as above required the said plaintiff will apply to the court for the relief demanded in the complaint.

Given under my hand and the seal of the district court of the fourth judicial district of the State of Colorado in and for the county of Chaffee, at Buena Vista, this nineteenth day of August, A. D. 1881.

[OFFICIAL SEAL.]

JOHN G. EVANS, *Clerk*,
By M. J. COCHRANE,
Deputy Clerk.

Endorsed.

STATE OF COLORADO, } ss:
County of Chaffee, }

I do hereby certify that I have duly executed the within
18 summons this 20th day of August, A. D. 1881, by delivering to each of the within-named, W. M. Quimby and J. S. Boon, a copy of this summons. I cannot find Jacob Welch in my county.

E. H. STAFFORD, *Sheriff*,
By A. T. RYAN, *Deputy.*

Filed this 20th day of Aug., A. D. 1881.

JOHN G. EVANS, *Clerk*,
By M. J. COCHRANE,
Deputy Clerk.

And at the same time there was filed in words and figures the following:

Writ of Injunction.

STATE OF COLORADO, } ss:
Chaffee County, }

The people of the State of Colorado to W. M. Quimby, J. S. Boone, and Jacob Welch and to your attorneys, solicitors, agents, and servants, and to each and every of them, Greeting:

Whereas it hath been represented to the Honorable Joseph C. Helm, judge of the fourth judicial district of the State of Colorado, and the sole presiding judge of the district court of the fourth judicial district in and for Chaffee county, in the State aforesaid, on the part of J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cooke, Jr., and Alex. Magruder, complainant-, in their certain bill of complaint exhibited before said judge
19 and filed in said court against you, the said W. M. Quimby, J. S. Boon, and Jacob Welch, to be relieved touching the matters therein complained of; in which said bill is stated, among other things, that you are combining and confederating with others to injure the complainants touching the matter set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience; and the said judge having under his hand endorsed upon said bill an order that a writ of injunction

issue out of said court, according to the prayer of said bill, we, therefore, in consideration thereof and of the particular matter in said bill set forth, do strictly command you, the said W. M. Quimby, J. S. Boon, and Jacob Welch and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from working, mining, extracting, disposing of, or removing any ore or mineral from the lode mining claim known as "The Paymaster lode," situate in the Monarch mining district, in Chaffee county, Colorado, and from selling, removing, or in anywise disposing of any ore or mineral already mined or broken from said lode mining claim, whether the same be on said premises or elsewhere, until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not, under penalty of what the law directs.

To the sheriff of said county to execute and return in due form of law.

Witness John G. Evans, clerk of said district court, and the seal thereof, at Buena Vista, in said county, this nineteenth day of August, 1881.

[OFFICIAL SEAL.] JOHN G. EVANS, *Clerk*,
By M. J. COCHRANE, *Deputy*.

20 Endorsed: I served this writ on the within, named W. M. Quimby. J. S. Boone, by delivering a copy thereof to each of them. I cannot find Jacob Welch in my county. This 20th day of August, 1881.

A. H. STAFFORD, *Sheriff*,
By A. T. RYAN, *Dep'ty*.

Filed this 20th day of August, 1881.

JNO. G. EVANS, *Clerk*,
By M. J. COCHRANE, *Deputy*.

Complaint.

STATE OF COLORADO, } *ss:*
County of Chaffee, }

In the District Court of the Fourth Judicial District of said State in and for said County of El Paso (Chaffee?).

J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Hanson W. Hendricks, Henry D. Cooke, Jr., Alexander F. Magruder, Plaintiffs,

vs.

W. M. QUIMBY, J. S. BOONE, and JACOB WELCH, Defendants.

The plaintiffs complain and allege—

I. That on the 27th day of July, A. D. 1881, they were lawfully possessed of and are now entitled to the possession of a certain lode and mining claim bearing silver and other metals, known as
21 and called the Paymaster lode, situate in the Monarch mining district, in the county of Chaffee and State of Colorado,

and more particularly described as follows, to wit: Beginning at the southeast corner of said claim, at a post marked No. 1, and running thence N. 35° 39′ E. 750 feet to east centre post, 1,500 feet, to corner No. 2; thence N. 54° 30′ W. 300 feet to cor. No. 3; thence S. 35° 30′ W. 750 feet to W. centre post, 1,500 feet, to cor. No. 4; thence S. 54° 30′ E. 300 feet to the place of beginning; from corner No. 1 a double spruce tree 14 inches in diameter bears N. 15° E. 4 feet, and the summit of Banana Mountain bears N. 49° 30′ W., situated on the crest of Limestone Mountain, about ¾ of one mile from the South Arkansas River. The Ben Bolt claim adjoins this claim on the east; and that, being so possessed thereof, the defendants afterwards, to wit, on the 27th day of July, A. D. 1881, wrongfully ousted the plaintiffs from said premises, and now wrongfully withhold the same from them, to the damage of the plaintiffs in the sum of one thousand dollars.

And the plaintiffs aver that heretofore, and in the year 1878, William P. Shepherd, through whom the plaintiffs claim as purchasers, entered upon said ground while it was a part of the public mineral domain of the United States and discovered said Paymaster lode in rock in place, and sunk a discovery shaft therein to a depth of ten feet from the lowest part of the rim of said shaft at the surface, and marked the surface boundaries of said claim by erecting six substantial posts, so that the boundaries could be readily traced, and erected at said point of discovery a stake con-
22 taining the name of said lode, the name of said location, and the date of discovery, and after doing the said acts, caused a location certificate of said lode and claim, in due form and as provided by law, to be recorded in the recorder's office of Lake, now Chaffee, county, and subsequently his title became vested, by certain deeds of conveyance, in the plaintiffs; and the plaintiffs say that they, the said plaintiffs, claim the legal right to occupy and possess said premises, under and by virtue of the laws of the United States and the laws of the State of Colorado, under the location and discovery so made by purchase.

II. For a second cause of action, the plaintiffs show to the court that the entry of said defendants upon said lode was made while the persons in possession, to wit, the plaintiffs, were temporarily absent therefrom, and that ever since such entry the defendants have kept men constantly upon said premises, making it impossible for plaintiffs to return, and that ever since such entry the defendants have been and now are extracting valuable ore from said mine and selling the same, converting the proceeds thereof to their own use, and that they threaten and will continue so to do unless restrained by order of this court.

Plaintiffs further show that defendants have considerable quantities of valuable ore, taken by them from said mine, upon the dump and elsewhere, undisposed of.

Plaintiffs further show that up to the present time defendants have so extracted and disposed of from said mine about 10
23 tons of ore, of the value of about three hundred dollars.

That said mine is valuable only for the ore contained therein;

that defendants are financially irresponsible, and that plaintiffs would be unable to collect any judgment they might recover against them, and that the said acts of the defendants are to the manifest wrong and injury of the plaintiffs and against their consent and amount to a destruction of the substance of their estate in the premises.

Wherefore the plaintiffs pray judgment—

1. For the restitution of the possession of the demanded premises, together with one thousand dollars damages and costs of suit.

2. That an injunction may issue restraining and enjoining the defendants, their servants, agents, and employees, and each of them, from working, mining, extracting, disposing of, or removing any ore or mineral from said mine and from selling, removing, or in any manner disposing of any ore or mineral already mined or broken, whether the same be upon the premises or elsewhere.

3. That a mandatory writ of injunction, having the force and effect of a writ of restitution, restoring the plaintiffs to the possession of said premises, may issue, and that upon presentation of this complaint a temporary writ of injunction, restraining the working of said mine and the removal and disposal of ores as above prayed may issue according to the statute in such case made and provided.

24 4. For such other and further or such other and different relief, or both, as the circumstances of this case may require and to the court shall seem meet.

JAMES Y. MARSHALL AND
CHAS. CAVENDER,
Attorneys for Plaintiffs.

STATE OF COLORADO, } ss:
County of Chaffee, }

J. Scott Boyd, being duly sworn, on oath says that he is one of the plaintiffs in the above-entitled cause; that he has read the foregoing complaint and knows the contents, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters and things he believes it to be true.

J. SCOTT BOYD.

Subscribed and sworn to before me this 16th day of August, A. D. 1882.

[NOTARIAL SEAL.] GEO. BLARSTORPHER,
Notary Public.

Upon the filing of within complaint, together with a bond, conditioned according to law, in the sum of $5,000.00, to be approved by the clerk, let a temporary writ of injunction issue according to the prayer of the complaint.

At chambers, Colo. Sp'gs, Aug. 18th, A. D. 1881.

JOSEPH C. HELM, *Judge.*

Endorsed: Filed in district court this 18th day of August, A. D. 1881. John G. Evans, clerk, by M. J. Cochrane, deputy.

And on August 26th, 1881, there was filed in said district court of Chaffee county, in words and figures, the following

Answer.

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court of the Fourth Judicial District in and for the County of Chaffee, State of Colorado.

J. SCOTT BOYD, RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cooke, Jr., Alex. F. Magruder, Plaintiffs,

vs.

W. M. QUIMBY, JOHN S. BOONE, and JACOB WELCH, Defendants.

Now come the said defendants, W. M. Quimby and John S. Boone, and thereupon, for answer to the complaint of plaintiffs herein, they say they deny that on the said 27th day of July, A. D. 1881, plaintiffs were lawfully possessed of the premises described in the plaintiffs' complaint as alleged, or that they are now entitled to the possession as alleged; they deny that on the said 27th day of ——, 1881, or at any other time the defendants or either of them wrongfully ousted the plaintiffs or either of them from said premises, or that they, said defendants, or either of them now wrongfully withhold the same from them or either of them, the said plaintiffs, to the damages of plaintiffs in — sum of one thousand dollars or any other sum; and defendants say that as to whether in the year 1878 or at any other time one William P. Shepherd, through whom the
26 plaintiffs claim title as purchasers, entered upon the said ground as alleged, while it was a part of the public mineral domain of the United States, and discovered said so-called Paymaster lode in rock in place, or sunk a shaft thereon to a depth of ten feet from the lowest part of the rim of the said shaft at the surface, and marked the surface boundaries of said claim by erecting posts as alleged, or erected a discovery stake at the point of such alleged discovery as alleged, the defendants have not nor can they obtain sufficient knowledge or information upon which to base a belief, and therefore they deny the same; and defendants further deny that after doing the said alleged acts the said Shepherd caused a location certificate of said lode and claim, in due form and as provided by law, to be recorded in the recorder's office of Lake, now Chaffee, county; and deny that subsequently at any time the plaintiffs acquired any title, by conveyances or otherwise, to the said premises; and defendants aver that said alleged location and discovery were not made in accordance with the laws of the United States and the laws of Colorado.

II. And, further answering said complaint and the second count thereof, the said defendants deny that any entry was ever made by defendants or either of them while the plaintiffs or either of them were temporarily absent, but only in the manner hereinafter mentioned, as of right they lawfully might do.

Defendants admit that they have been, and up to the time of the service of the temporary writ of injunction issued in this cause they were, mining and extracting ore from said premises and
27 selling and converting the proceeds to their own use, as they lawfully might do. Defendants admit that they have some quantity of ore on the dump of the premises hereinafter described undisposed of, but defendants say that they have not nor can they obtain any information sufficient upon which to base a belief as to the amount thereof or the value of the ore by them extracted. Defendants admit that said premises are valuable chiefly for the ore contained therein, but defendants deny that they are financially irresponsible as alleged, or that the acts or any of them, of the defendants or either of them, are to the manifest wrongful or other injury of the plaintiffs or either of them, or that they amount to a destruction of any estate of the plaintiffs or either of them in the said premises.

And said defendants, further answering, and by way of cross-complaint herein against the said plaintiffs, aver that on the 27th day of July, A. D. 1881, the premises hereinafter described were, and for a long time prior to said date had been, vacant and unoccupied mineral lands upon the public domain of the United States; that on the said 27th day of July, A. D. 1881, the said defendants, W. M. Quimby, John S. Boone, and Jacob Welch, all being then and there citizens of the United States, did enter upon and locate in accordance with law the following-described premises, situated on Monarch Mountain, in the Monarch mining district, Chaffee county, State of Colorado, to wit: Beginning at corner 1 on summit of Monarch Mountain, thence N. 26° E. 1,500 feet, cor. stake No. 2; thence N. 64° W. 300 to cor. stake No. 3, from which Mt. Keys bears 27° 30′ W., Iron Mt. bears N. 65° W.; thence S. 26° W. 1,500 feet to cor.
28 No. 4; thence S. 64° E. 300 ft. to cor. stake No. 1, the place of beginning, from which a green spruce tree, 10 in. in diameter, marked M., bears S. E. 6° distant. The east side of the "Monticello" claim lays on the W. side of the Lookout mining claim 117 feet, and the two claims lay parallel from the discovery shaft of the Smith, and Gray mine bears S. 54° W., magnetic survey, and named, called, and designated the same as the Monticello lode, within which said claim is embraced a portion of the premises described in the complaint of the plaintiffs as the "Paymaster;" that said location was made in the manner hereinafter detailed, to wit, defendants, as above mentioned, jointly entered upon said premies above described and discovered the said Monticello lode bearing silver and other metals in rock in place; that thereupon the said above-mentioned locators did sink a discovery shaft upon the lode to a depth of more than ten feet upon the lode from the lowest part of the rim of said shaft and of depth sufficient to show a well-de-

fined crevice, they did then and there post at the point of discovery on the surface a plain sign and notice containing the name of the lode, the names of the locators, to wit, W. M. Quimby, John S. Boone, and Jacob Welch, and the date of discovery; and defendants say that they, the said locators of said claim, did mark the surface boundaries of the same by six substantial posts hewed and marked on the sides in towards the claim and sunk in the ground so that the boundaries would be readily traced, one at each corner and one at the centre of each side line; that afterwards, to wit,
29 on the 15th day of August, and within 3 months from the date of discovery of said lode, they did record their said claim in the office of the recorder of Chaffee county, State of Colorado, by a certain certificate which contained the name of the lode, the names of the locators, the date of location, the number of feet in length claimed on each side of the centre of the discovery shaft, and the general course of the lode as far as might be, and the said certificate further contained a statement that the said "Monticello" claim was a relocation of a part or parcel of the claim known as the "Paymaster" (which said certificate is now here to the court shown and prayed to be considered a part hereof). Defendants further say that prior to the filing of said certificate they had sunk to a depth of more than ten feet deeper in the original shaft of the so-called "Paymaster" lode, and have ever since been extracting ore from their said claim until restrained by the writ of injunction issued as aforesaid out of this honorable court; that at the time of the entry of defendants as aforesaid the said plaintiffs had long prior thereto abandoned the said "Paymaster" claim and had utterly failed and neglected to do or perform the necessary annual labor thereon as required by law for the space of more than a year prior to December 31st, 1880, and up to the time of the entry of defendants, to wit, on the said 27th day of July, 1881, they had wholly failed and neglected to do and perform such annual labor, whereby the same became forfeited and was abandoned by plaintiffs, & at
30 the time of the entry of defendants as aforesaid was vacant, unoccupied mineral land upon the public domain of the United States and subject to relocation.

Wherefore defendants pray the court that a writ of injunction may issue out of this honorable court enjoining and restraining plaintiffs, their agents, employees, and servants from in anywise interfering with or disturbing defendants in the quiet and peaceable possession and enjoyment of said Monticello claim, and that upon the final hearing of this cause said injunction may be made perpetual; that they have judgment for the costs of this action, and that they may have such other, further, or different relief as to the court may seem meet or the nature of the defendants' case may require, &c.

SHARMAN & CASPER,
Att'ys for W. M. Quimby & John S. Boone.

STATE OF COLORADO, } ss:
County of Chaffee, }

W. M. Quimby, being duly sworn, on his oath states that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof; that the facts therein stated are true to his knowledge, except as to those matters which are therein stated on his informntion and belief, and as to those matters he believes it to be true.

W. M. QUIMBY.

Subscribed and sworn to before me by W. M. Quimby this 23d day of August, 1881.

[NOTARIAL SEAL.] A. H. TAYLOR,
Notary Public.

Endorsed: Filed in district court August 26th, 1881. John G. Evans, clerk, by M. J. Cochrane, dep'ty.

31 And there was also filed in said district court in and for El Paso county the following order made in said cause in Chaffee county, Colorado:

J. SCOTT BOYD *et al.*
vs.
W. M. QUIMBY *et al.* } No. 242.

Be it remembered that heretofore and on, to wit, the 21st day of September, A. D. 1882, at chambers, in Buena Vista, the following proceedings were had and entered of record:

"J. SCOTT BOYD, Jr., *et al.*
vs.
W. M. QUIMBY *et al.* } No. 242.

"Comes now the plaintiffs, by C. S. Thomas and Charles Cavender, their attorneys, and comes also the defendants, Quimby and Boone, by L. B. Wheat and Sharman and Casper, their attorneys, and thereupon, on motion of said defendants, it is ordered that leave be granted to file amendments to answer instanter."

And thereupon was filed the following amendment to answer:

Amendment to Answer.

STATE OF COLORADO, } ss:
Chaffee County, }

In the District Court in the County of Chaffee, in the State of Colorado.

J. SCOTT BOYD and Others, Plaintiffs,
vs.
W. M. QUIMBY, J. S. BOONE, and JACOB WELCH, Defendants. } No. 242.

32 And now again come W. M. Quimby and J. S. Boone, two of the defendants in this the above-entitled action, and for an

amendment to their answer heretofore filed herein deny that the defendants in said action or any of them now wrongfully withhold or ever wrongfully withheld any lode, mining claim, or premises mentioned in the complaint in this said action or any part thereof from the plaintiffs in this said action or any of them, and deny that said plaintiffs or any of them are, were, or have been since the 31st day of December, A. D. 1880, either possessed of or entitled to the possession of any such mining claim or premises or any part thereof.

The above statements are made on information and belief of the affiant, who makes the hereto-attached affidavit.

L. B. WHEAT,
Attorney for said Answering Two Defendants.

STATE OF COLORADO, }
Chaffee County, } *ss:*

I, the undersigned, being first duly sworn, do on oath depose and say that I am one of the attorneys in the action in the foregoing pleading mentioned of and for W. M. Quimby and J. S. Boone, two of the defendants therein named, and that the foregoing amendment to an answer is true of my own knowledge, except as to the matters which are therein stated on affiant's information and belief, and as to those matters I believe it to be true. This affidavit is not made by any of said defendants, because they do not reside in the same county either of their attorneys does.

L. B. WHEAT.

33 Subscribed in my presence and sworn to before me, the undersigned, clerk of the above-named district, in the county of Chaffee and State of Colorado, this 9th day of January, A. D. 1882.

In witness whereof I hereto set my hand and affix the seal of said court the day & year last aforesaid.

[DISTRICT COURT SEAL.] JOHN G. EVANS,
Clerk Dist. Court Chaffee Co.

Endorsed: Filed in the district court January 9th, 1882. John G. Evans, clerk.

STATE OF COLORADO, }
County of Chaffee, } *ss:*

In the District Court.

Be it remembered that heretofore, to wit, on the 11th day of September, A. D. 1882, it being one of the regular days of the September, A. D. 1882, term of said court, the following proceedings, *inter alia*, were had and entered of record, to wit:

J. SCOTT BOYD *et al.*, Pl'ffs, }
vs. } No. 242.
W. M. QUIMBY *et al.* }

SEPT. 11TH.

This day this cause coming on to be heard, plaintiffs appearing

by their attorney, Chas. Cavender, Esq., and the defendants, W. M. Quimby and J. S. Boon, by their attorney, W. J. Sharman, Esq., the said plaintiffs waiving notice of —, on motion of said defendants, it is hereby ordered that the order heretofore made in vacation, to wit, on the 1st day of July, A. D. 1882, changing the venue of said cause to the county of El Paso, is hereby set aside and vacated, and
34 the said cause further coming to be heard on said defendants' motion to vacate the judgment heretofore rendered against them in said above-entitled cause on the 24th day of May, A. D. 1882, and during the May, 1882, term of said court, and to grant them a new trial in said cause, plaintiffs appearing by their said counsel, Chas. Cavender, Esq., and waiving notice of such motion, and said defendants, W. M. Quimby and J. S. Boon, appearing by their attorney, W. J. Sharman, Esq., and the court having heard the evidence and the arguments of counsel, and it appearing to the court that said defendants did, prior to the 1st day of this term, the same being the next term succeeding that at which said judgment was rendered, and on the 29th day of June, A. D. 1882, pay all costs against them by said judgment, it is now by the court considered, ordered, and adjudged that the said motion of the said defendants be sustained, and that said judgment be, and the same is hereby, vacated and set aside and the said defendants granted a new trial in the said above-entitled cause under the statutes; and this cause coming on to be heard on the said defendants' petition for a change of venue, the said plaintiffs appearing by their attorney, Chas. Cavender, Esq., and waiving notice of such petition, and the defendants, W. M. Quimby and J. S. Boon, appearing by their attorney, W. J. Sharman, Esq., and the court having heard the evidence upon such application and the argument of counsel, and being fully advised in the premises, it is considered, ordered, and adjudged that said application be granted, and that the venue of said cause be, and the same is hereby, changed to the county of El Paso; and, further, that the clerk of this court shall transmit the files in accordance with law.

35 Be it remembered that heretofore and on the 9th day of November, A. D. 1882, the same being one of the days of the regular November, A. D. 1882, term of said court, the following proceedings (*inter alia*) were had and done, to wit:

J. SCOTT BOYD *et al.*
vs.
W. M. QUIMBY *et al.* } # 823.

Upon the filing of the application and affidavit of defendants herein for the issuing of subpœnas in their behalf, it is hereby ordered that subpœnas may issue for witnesses of defendants to the counties of this fourth judicial district, in accordance with statute in such case made and provided.

J. SCOTT BOYD *et al.*
vs.
W. M. QUIMBY *et al.* } # 823.

Upon the filing of the application and affidavit of plaintiff herein for the issuing of subpœnas in his behalf, it is ordered that subpœnas may issue for witnesses of plaintiff- to the counties of this fourth judicial district, in accordance with statute in such case made and provided.

Be it remembered that afterwards and on the 17th day, the same being one of the days of the regular November, A. D. 1882, term of said court, the following proceedings (*inter alia*) were had and entered of record, to wit:

36 J. SCOTT BOYD *et al. vs.* W. M. QUIMBY *et al.*

At this day this action came on regularly for trial, Messrs. Cavender' Thomas and Patterson and Wm. Harrison, Esq., appearing as counsel for plaintiffs, and Messrs. Sharman and Williams appearing as counsel for defendant, a jury of twelve persons, to wit, R. W. Anderson, Adam Paster, E. S. Bumpstead, T. F. Clifford, A. J. Bletsoe, A. J. Belcher, H. S. Root, S. J. Caruthers, M. Bourk, Geo. Strong, W. S. Walker, and J. C. Goodell were regularly empannelled and sworn to try said action.

Whereupon court adjourned.

And afterwards and on the 18th day, the same being one of the days of the regular Nov., 1882, term of said court, the following proceedings (*inter alia*) were had and done, to wit:

J. SCOTT BOYD *et al. vs.* W. M. QUIMBY *et al.*

At this day come again said parties, by their counsel, and also come the jury heretofore empanelled and sworn herein; whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined, documentary evidence being also introduced. After hearing the evidence, instructions of the court, and arguments of counsel the jury retired in charge of a sworn officer to consider of their verdict, and subsequently return- into court with the verdict, signed by the foreman, and, being called, answered to their names and say, "We, the jury, find for the plaintiffs, and that they are
37 entitled to the possession of the premises in controversy; and we further find that the work done in 1880 was worth $100."

And afterwards and on the 20th day of November the following proceedings, *inter alia*, were had and done, to wit:

J. SCOTT BOYD *et al. vs.* W. M. QUIMBY *et al.*

At this day come the plaintiffs, by Messrs. Patterson and Cavender and William Harrison, Esq., their attorneys, and the defendants, by Messrs. Sharman and Williams, their attorneys, also come, and defendants' motion for judgment, notwithstanding the verdict, com-

ing on to be heard, and the same having been duly argued and submitted, the court does, on consideration thereof, overrule the same.

J. SCOTT BOYD *et al. vs.* W. M. QUIMBY *et al.*

At this day come again said parties, by their respective counsel, Messrs. Patterson and Cavender appearing as counsel for plaintiffs, and Messrs. Sharman and Williams, as counsel for defendants, and defendants' motion for a new trial herein coming on to be heard, and the same having been duly argued and submitted, the court does, on consideration thereof, overrule said motion. It is therefore considered by the court that the said J. Scott Boyd *et al.*, plaintiffs, do have and recover of and from said W. M. Quimby *et al.*, defendants, the possession of the lode mining claim known as the
38 "Paymaster lode," situate in the Monarch mining district, in Chaffee county, Colorado, and more particularly described as follows: Beginning at the southeast corner of said claim, at a point marked No. 1, and running thence N. 35° 30′ E. 750 feet to E. centre post, 1,500 feet, to corner No. 2; thence N. 54° 30′ W. 300 feet to cor. No. 3; thence S. 35° 30′ W. 750 feet to W. centre post, 1,500 feet, to cor. No. 4; thence S. 54° 30′ east 300 feet to the place of beginning in accordance with the verdict of the jury heretofore made and entered herein, together with said plaintiffs' costs and disbursements incurred by them in and about these proceedings in this behalf, and that execution issue therefor.

And afterwards and on the same day the following proceedings, *inter alia*, were had and done, to wit:

J. SCOTT BOYD *et al vs.* W. M. QUIMBY *et al.*

At this day come the plaintiffs, by Messrs. Patterson and Cavender and Wm. Harrison, Esq., their attorneys, and the defendants, by Messrs. Sharman and Williams, their attorneys, also come, and thereupon the defendants pray an appeal to the supreme court of the State of Colorado from the judgment heretofore entered in this cause, which appeal is granted, but upon condition, nevertheless, that the said defendants within 60 days from this date file their appeal bond in the penal sum of one thousand dollars, with good and sufficient sureties, to be approved by the clerk of this court, and that time and ninety days is given defendant to present to the judge of this court a bill of their exceptions reserved by them herein, which,
39 when signed and sealed by said judge, may be filed as of this day.

And afterwards and on the 18th day of January, A. D. 1883, there was filed in said cause in words and figures the following bill of exceptions:

Bill of Exceptions of Defendants.

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court of the Fourth Judicial District in and for said County and State.

J. SCOTT BOYD, RICHARD T. HAINES, JUDSON BENT, *et al.*

vs.

W. M. QUIMBY, J. S. BOON, and JACOB S. WELCH.

Before the Hon. J. C. Helm and a jury, tried at Colorado Springs, Colo., November 17th and 18th, A. D. 1882, being days of the regular November, A. D. 1882, term of said court.

Appearances: For plaintiffs, Mess. Markham, Patterson and Thomas, and Charles Cavender, Esq.; for defendants, W. J. Sharman, Esq., and J. L. Williams, Esq.

Be it remembered that on the trial of the above-entitled action the plaintiffs, to maintain the issues herein on their behalf, gave in evidence as follows—that is to say:

NOVEMBER 18TH, 1882.

W. E. GREENLEAF, called and sworn on the part of the
40 plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. What is your name, Mr. Greenleaf?
A. Warren E. Greenleaf.
Q. Where do you reside?
A. Poncha Springs.
Q. What is your business?
A. Mining and prospecting.
Q. Are you acquainted with the Monarch mining district, in Chaffee county?
A. Yes, sir.
Q. Do you know the Paymaster lode there?
A. Yes, sir; I do.
Q. Claimed by Boyd and Haines and others?
A. Yes, sir.
Q. When did you first become acquainted with that lode?
A. In the latter part of October or the first or second of November; I don't remember which.
Q. In what year, sir?
A. In 1878.
Q. What was the condition of that lode at that time, Mr. Greenleaf?
A. There has been a shaft started on it that has not been completed.

Q. What was down in this shaft?
A. Galena, on the north side.
Q. What were you there for—simply examining?
A. No, sir; I was there to work the claims.
Q. To do the work on the claim?
A. Yes, sir.
Q. What did you do?
A. We sunk the shaft down a good ten feet; it may be a little over.
Q. Was this the discovery shaft?
A. Yes, sir.
Q. What was at the bottom of that shaft at ten feet?
A. Galena, on the north side.
Q. What was the condition of the wall rocks, sir?
A. One wall was in place, the other rock we hadn't struck yet.
41 Q. One wall was in place?
A. Yes, sir; or apparently so.
Q. What did this galena carry, if you know—what mineral?

Objected to by defendants' counsel because the foundation for such question has not yet been laid; which objection was sustained by the court.

Q. Are you accustomed to the nature and formation of rocks in that district?
A. That was my first experience there, sir.
Q. Have you been accustomed since?
A. Yes, sir.
Q. Are you now familiar with the rocks and ores in that district?
A. Yes, sir.
Q. I will ask you, from your knowledge since attained and your knowledge at that time, was that mineral-bearing rock, and what mineral, if any, it carried?
A. It was mineral-bearing rock in the bottom of the shaft.
Q. What does the galena in that country carry?
A. It carries — to a great extent.
Q. Does it carry silver or lead?
A. It carries silver and it carries lead.
Q. Now, sir, I will ask you if any stakes or posts were on that claim—if you saw any?
A. Yes, sir; there was a discovery stake.
Q. Where was this discovery stake, sir?
A. On the east side of the discovery shaft.
Q. What was on that stake, if anything?
A. There was a notice written; I don't remember the words of it now.
Q. Do you remember what name was on it as the discoverer?
A. I remember one name, and that was Shephard.
42 Q. Did it bear the name of the lode, or what was on it?
A. The Paymaster lode was on it.
Q. Did it have any date on it?

A. I think it did; but I do not remember.
Q. Did it have any directions on it?
A. Yes, sir; it was quite a long notice.
Q. Did you see any stakes on this load—boundary stakes?
A. Yes, sir; Mr. Abbott placed them.
Q. Did you see them placed?
A. Yes, sir.
Q. Where were they placed?
A. I don't know.
Q. As regards the sides and centers?
A. One at each end, two in the centers, one on each side.
Q. How were they marked?
A. According to the number of the post and the corner.
Q. On what side of the stakes were these marks put?
A. On the inside.
Q. Towards the claim?
A. Towards the claim; yes, sir.
Q. You say in the early part of November you sunk the shaft to the depth of more than ten feet?
A. Yes, sir.
Q. And the wall rock was in place?
A. Yes, sir.

Cross-examination by Mr. SHARMAN:

Q. You say your first visit to this claim was in November; about the first of November, 1878, was it?
A. Yes, sir.
Q. Who visited the claim with you at that time?
A. I don't exactly remember now, sir.
Q. Will you try and think; was there any one with you?
A. Yes, sir.
Q. How many?
A. Well, I don't exactly remember.
Q. Two?
A. I don't exactly remember now, sir.
43 Q. You don't remember whether you were there with one man or two?
A. No, sir.
Q. Was there a surveyor with you?
A. Not at that time; no, sir.
Q. What did you do when you first went up there?
A. There was two men to work on it, and I kept them to work.
Q. Then no one went with you?
A. There was parties went to the claim with me when I first went up there.
Q. Now, can't you remember who, if any, those were?
A. I think Mr. James L. Hill was one.
Q. Are you certain?
A. No, sir; I am not certain.
Q. You don't know that there was any one else?

A. I wouldn't want to say just now.
Q. Well, can't you say?
A. That is all I can say; I don't recollect.
Q. Then you think possibly Mr. Hill was with you, but further than that you have no recollection?
A. I cannot remember at the present moment; no, sir.
Q. What did you do when you went there; how long were you there?
A. The first time I went to the claim?
Q. Yes, sir.
A. I was there a short time, not long.
Q. Well, about how long?
A. I couldn't say; probably ten or fifteen minutes.
Q. Now, you say you found two men at work there; who were they?
A. I don't remember.
Q. You don't remember that?
A. No, sir.
Q. You say you kept them at work?
A. I kept them at work on the claim.
Q. What became of these two men?
44 A. They were changed onto another claim.
Q. Did you change them?
A. I changed one of them.
Q. The other remained there?
A. Yes, sir.
Q. You don't remember who they were?
A. I remember one; he was Mr. Radcliff.
Q. What was his business?
A. Miner.
Q. He was at work where?
A. On the Paymaster lode, in the shaft.
Q. In what shaft, the Paymaster—in the one you found there first?
A. Yes, sir.
Q. Now, how deep was that shaft when you first went there, Mr. Greenleaf?
A. Well, I should say it was five or six feet deep; that is my recollection at present.
Q. And that was on the first of November, 1878?
A. Yes, sir.
Q. Some five or six feet deep?
A. Yes, sir.
Q. And one of these men you removed from there and put on another claim?
A. Yes, sir.
Q. By whose authorization did you do that?
A. My own.
Q. What interest, if any, did you have in it?
A. I was sent there to look after the men.
Q. Who sent you there—that is what I asked you?

A. Mr. John McGruder.
Q. Any one else?
A. Well, he is the only one I knew anything about; he told me to go there.
Q. He hired you?
A. Yes, sir.
Q. Do you know who he represented besides himself?
A. He represented some other parties; no, sir; not all of them.
45 Q. Do you know whether he represented the Monarch Pool Company?
A. I do not, sir.
Q. What is your best impression about that?
A. I couldn't say; I don't know.
Q. Did you afterwards find out any one else who was interested in sending you there?
A. Well, I know parties that were interested, that is all.
Q. Who were they?
A. I understood Mr. Boyd, Mr. Haines, and Major Hulbert.
Q. When did you learn they were interested—before you went there or afterwards?
A. Afterwards.

Plaintiffs' counsel objected to this line of questions because the same is not proper cross-examination.

The COURT: I think he may go into it sufficiently to show what interest this witness had in going there, which, I suppose, is the object of the examination.

Q. You afterwards found out that Mr. Boyd, Mr. Haines, and others were interested?
A. I understood so; yes, sir.
Q. But in the first instance you were employed by Mr. McGruder specially?
A. Yes, sir.
Q. And when you went there you found the hole six feet deep?
A. About that depth.
Q. You staid there about fifteen minutes?
A. About that time.
Q. When did you next visit the claim?
A. The next day, sir.
Q. Who went with you the next day?
A. Alone.
Q. Who did you find there?
A. The men that went up in the morning.
46 Q. Who were they?
A. I don't remember the names.
Q. Do you mean to say you don't remember the men you employed to do any work there, then?
A. Not on that partieular claim; no, sir; I don't remember the names exactly.

Q. You were employed on the other claims on the same hill?
A. Yes, sir.
Q. Then your recollection might be a little indistinct as to which this claim was?
A. No, sir; it is not.
Q. How many other claims were you employed to go and look at?
A. Eight or nine of them.
Q. All on the same hill?
A. Yes; pretty much all on the same hill.
Q. Now, what were you employed to do, Mr. Greenleaf?
A. To look after the men at work; to see that the work was done.
Q. You say that was your first experience in mining?
A. No, sir; I didn't state so.
Q. Didn't you say that was your first experience on direct examination?
A. On that hill? I said that was my first experience with that mineral.
Q. How long did you say you had been a miner?
A. I didn't state.
Q. Will you state now?
A. I hadn't been very long; some two or three months in Leadville.
Q. About three months in Leadville?
A. Yes, sir; then I prospected for myself.
Q. Where?
A. In New Mexico.
47 Q. How long before?
A. The same year—in 1878.
Q. Didn't you state that you had had, on a former trial of this case; didn't you state that you had had but a month or so experience in mining at that time?
A. No, sir; I don't think I did. I think I stated two or three months in Leadville, and I prospected before; I don't think I was asked the question about that.
Q. You remember testifying in this case before?
A. Yes, sir.
Q. Now, then, when did you first begin to mine—if you can refresh your recollection—in 1878? This was November first, you say, when you first went up there?
A. I was in August, I think, up there in Leadville—some time in August; I don't remember the exact date.
Q. And this was in November?
A. Yes, sir.
Q. Whereabouts in Leadville did you do any mining?
A. For the Leadville Company.
Q. Where is that situated?
A. In Stray Horse gulch.
Q. What is the character of mineral there?
A. Carbonates.
Q. The same character of mineral you saw or found afterwards in the Paymaster shaft?

A. No, sir; not the same.

Q. So this was an entirely new kind of mineral in your experience?

A. It was to a great extent; yes, sir.

Q. It was entirely so, was it not?

A. No, sir; we had some ore that looked very much like it.

Q. Where?

A. In the Adelaide and Terrible.

Q. How long did you work in the Adelaide?

A. I worked about between two and three months.

Q. What were you doing in the Adelaide?

A. I was mining below.

48 Q. What sort of work—picking?

A. Pick, shovel, and blasting.

Q. You were working as a laborer?

A. Yes, sir.

Q. What was your business before you entered into mining?

Objected to by plaintiffs' counsel. Objection sustained.

Q. What has been your business since then, Mr. Greenleaf?

A. Prospecting.

Q. Where?

A. Over in the Gunnison country.

Q. Have you any other business?

A. Not much of any; no, sir.

Q. Well, now, you have attempted to state just exactly what was on the discovery stake and the other posts, will you please state again to the jury?

A. I don't remember exactly what was on the discovery stake. I remember it was a long notice, and the head; I don't remember what it was; Paymaster lode, and one name; one name on it was William Shephard; I don't remember the initials.

Q. Do you remember the date?

A. No, sir; I do not.

Q. All you remember is the name of William Shephard and the name of Paymaster?

A. That is all I remember.

Q. Did you at any time put down any stakes on that claim?

A. I assisted Mr. Abbott, of Lake City, a surveyor, to put the corner stakes down when he surveyed the claim.

Q. When was that?

A. That was along about the middle of November.

Q. That was some time after you had gone up there, then, the first time?

A. Yes, sir.

Q. There were no stakes there at that time, then?

A. No, sir.

Q. No corner stakes?

A. No corner stakes.

49 Q. All the stakes that were put there were put there by you and Mr. Abbott, the surveyor?

A. Yes, sir.
Q. Was any one else assisting you?
A. Yes, sir; there was Mr. Finnegan, and there was another party; I don't remember who it was.
Q. How long did you work on that shaft?
A. I think it was about fifteen days.
Q. From the first to the fifteenth?
A. Yes, sir.
Q. You went into this six-foot hole and did the work there, did you?
A. Yes, sir.
Q. What was that—a shaft, or an adit, or a drift, or what?
A. It was the commencement of a shaft when we started there.
Q. It was just a vertical shaft?
A. Yes, sir.
Q. Did you see any other shaft there?
A. There was one or two gouges.
Q. But this six-foot shaft was the one you went in?
A. The one the parties were working on; yes, sir.
Q. That was the one the discovery stake was at, wasn't it?
A. Yes, sir.
Q. And how deep did you say you sunk that afterwards?
A. We sunk it a little over ten feet.
Q. And that took you until about the fifteenth or sixteenth of November?
A. Yes, sir; about the fifteenth of the month.

W. J. FINNEGAN, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. What is your name, Mr. Finnegan?
A. W. J. Finnegan.
Q. Where do you live, sir?
A. I am now on the Black Basin.
50 Q. What is your business, Mr. Finnegan?
A. Prospecting and mining generally.
Q. How long have you been a miner, sir?
A. I have been mining since 1875, continually, right around this section.
Q. You have been mining here since 1875?
A. Before that I done some mining, but this last time in Colorado.
Q. Where did you mine before 1875?
A. I mined in Boulder county previous to 1874.
Q. How long, sir?
A. Some five or six years previous to that.
Q. How long altogether have you been a miner?
A. I think I followed mining for about ten years continually; at other times I have been doing what I am now, hunting and trapping.

Q. Do you know the Monarch mining district, Chaffee county?
A. Yes, sir.
Q. Do you know the Paymaster lode situated there?
A. I know one Paymaster lode.
Q. Do you know the Paymaster claimed by Haines, Hulbert, Bent, and Boyd?
A. Yes, sir.
Q. When did you first become acquainted with that lode?
A. In 1878.
Q. How did you go there?
A. I was then engaged working for John Wingate, who represented the Monarch Mining Company, and I believe he was sent there by Mr. Van Giesen; I suppose I was working for him; he hired me.
Q. You went with him to the Paymaster lode?
A. I went to the Paymaster lode with him, sir.
Q. When was that, if you remember?
A. That was either November or December; the latter part of 1878.
51 Q. Did you go to the discovery shaft of that lode, sir?
A. Yes, sir.
Q. What was the condition of that shaft, Mr. Finnegan?
A. Mr. Abbott and I agreed there together that it was over ten feet. I think we admitted it was six or seven inches over ten feet deep at that time.
Q. Did you measure it?
A. Mr. Abbott, he did. He dropped one of those steel tape lines into it. I seen it.
Q. You saw where it went to?
A. Yes, sir.
Q. Was that on the lowest side of the shaft?
A. Yes, sir.
Q. Who is Mr. Abbott?
A. A deputy United States surveyor at Lake City.
Q. What was in that shaft, Mr. Finnegan, if you saw?
A. I didn't examine the shaft very thoroughly. We found a lot of galena ore where we measured it.
Q. What was the condition of that ore as to being in place?
A. It looked like all galena ore coming out of lime formation that I have seen.
Q. What were the walls of this vein?
A. I didn't examine the walls. I was rustling around getting stakes for the surveyor. I didn't pay much attention to it.
Q. You saw the walls, didn't you?
A. Yes, sir; I think there was one wall on the east side. We looked down into it carefully, and I stumbled against a pick and shovel, and I said some one had better take it down. It had been snowing the day previous, and the lime seemed to be in place, and I called it carbonate ore; the lime was all carbonized.
Q. This ore that you saw, where was that lying with refer-
52 ence to the walls?

A. The ore—the pile of ore—laid at the lower rim of the shaft, pretty close to where we measured it.

Q. I mean the ore which you saw in the shaft?

A. I didn't go down into the Paymaster shaft at that time.

Q. Did you see any stake at the shaft?

A. Yes, sir; there was one stake.

Q. What was that stake that you saw?

A. It was a stake that seemed to be located and placed there by Mr. Shepherd, whose name appeared upon there as locator of the Paymaster mine.

Q. Do you remember what date was on it, if anything?

A. I do not.

Q. What did you do after this, if anything?

A. Mr. Abbott went to work and set his instrument and got it in position and I then worked with him; I and Mr. Wingate and Mr. Greenleaf completed the survey and erected all the stakes. The first thing I done I got the stake and gave it to Mr. Abbott, and he took the stake we found with Mr. Shephard's name on, and he took out his book and commenced figuring and making, as I supposed, a *bona fide* location.

Q. He put something on the stake?

A. Yes, sir; he wrote on the stake.

Q. What did he do with it then?

A. The stake was placed right a little above the upper rim of the shaft, what we call the high part of the shaft; his stake was placed somewhere within ten feet of the shaft.

Q. What did you do after this?

A. I carried the chain, under Mr. Abbott's orders, and he set his instrument and I got some stakes, and he marked them and I placed them according to his instructions.

53 Q. Where did you put those stakes?

A. At the corners, side lines, and one at the discovery shaft.

Q. Were these corners and side centre stakes marked?

A. Yes, sir.

Q. On which side of the stakes, with relation to the claim, were they marked?

A. The mark stood facing the centre line of the claim.

Q. This galena you saw on the dump and you saw in the shaft, from your experience in mining and the rocks of that country, what did that carry in the way of mineral, if anything?

A. It was very heavy galena. I should judge it run very light in silver and very heavy in lead.

Cross-examination by Mr. SHARMAN:

Q. This stuff you spoke of you found on the outside of the hole, on the dump?

A. On the lower edge of the shaft.

Q. You didn't go down in the hole yourself?

A. Not at that time.

Q. Where was that shaft situated relatively to the boundaries of the claim?

A. The shaft, I think, as near as my memory will serve me, was placed very near the centre of the claim, very near the centre; I think it was the centre of the claim from the amount of ground we had to travel over to put up the upper end stakes; it was about the centre; I wouldn't be positive about the distance, because I may have forgotten; it might not be quite in the centre.

Q. But you don't know really anything about that?

A. I don't know the number of feet. I know the centre.

Q. You didn't measure?

A. I carried the chain, but my memory don't serve me.

Q. You don't recollect, then?

54 A. I know it was a proper survey at the time.

Q. And therefore you cannot state?

A. No, sir.

Q. You didn't do any work in the shaft when you went up there with the surveyor?

A. No, sir; I didn't.

Q. What was the condition of the shaft at that time as to snow?

A. The condition of the shaft was very good; there was about two or three inches of slight snow, which, I think, fell the night before; it fell within forty-eight hours of the time.

Q. Only a few inches of snow, sufficiently to cover up the bottom, however?

A. Well, you could see down pretty well.

Q. You could see through the snow?

A. I could see where there wasn't any snow.

Q. Then the bottom of the shaft, in fact, wasn't all covered with snow?

A. There were places that wasn't covered in the bottom of it.

Q. That is all the connection you had with the matter, was it, Mr. Finnegan, to go up and assist Mr. Abbott in setting up the posts?

A. Yes, sir; and chaining the ground, that is all, and placing the stakes.

Redirect examination by Mr. CAVENDER:

Q. You spoke about not having been down in the shaft at the time, but at another time; you were down recently?

A. I was down in the shaft before that, but not after.

Q. What was the condition of the shaft before Mr. Greenleaf went up there, Mr. Finnegan?

A. Well, at the time I went up there, it was pretty hard in the bottom, so much so that Mr. Lacy, I think, was working there,

55 who we'll call old Jimmy, was working in the shaft, and he commenced to swear and said we would have to bring up some powder; that it was getting very hard in one corner of the shaft.

Q. What was in the bottom of the shaft?

A. We would get into decomposed dirt and carbonate. Sometimes you would get a chunk of galena that would weigh five or

ten, and I had one piece in my hand that weighed fifteen pounds of solid galena ore.

Q. What were on each side of that galena?

A. Lime.

Q. Was that lime hard or soft?

A. It was pretty hard, or soft at that time when I was up there with Jimmy.

Q. Was it in place or not?

A. It was in place.

Plaintiffs' counsel offer in evidence the location certificate of the Paymaster lode.

Which was objected to by defendants' counsel because the description is not properly tied to monuments, and also because there is no statement in the certificate showing how much is claimed on either side of the discovery shaft, and there is no mention made of a shaft and its relative position to the side lines.

The COURT: The statute uses the expression or phrase "in length." He must state in his location certificate the number of feet in length claimed on each side of the center of the discovery shaft. Now, the construction put upon that, as far as I know, applies to the length of the claim and not the width, and this does state that they claim
200 feet northwesterly, I believe, from the center of the dis-
56 covery shaft and 1,300 feet southeasterly from the discovery shaft. Now, that is the number of feet claimed in length from the discovery shaft and that is a compliance with the statute, as I have always understood it. Your proposition that the statute means "in width" I could hardly agree with, because it does not say so. If the Legislature had intended to say "the number of feet in width" claimed on each side of the discovery shaft they would have said so, and the fact that they did not say so and they did say "in length" indicates in my mind that they meant to have these six posts indicate the length to the parties; the requirement there has reference to the length of the claim and not the width. As to the other point, the claim is tied to a spruce tree fourteen inches in diameter; if it is marked, it is a sufficient tie; if it is not marked, that in itself is not a sufficient tie; but it is tied to a certain mountain peak the bearings of which are given, and it is described with reference to a stream. The thing which makes the tie effective, I think, is the reference to the mountain peak.

To which ruling of the court the defendants, by their counsel, then and there duly excepted.

Which said certificate was marked Pl'ffs' Ex. A, and is in words and figures following, to wit:

STATE OF COLORADO, } ss:
County of L., }

Know all men by these presents that I, the undersigned, have this 28th day of August, 1878, claimed by right of location

57 fifteen hundred feet, linear and horizontal measurement, in length and three hundred feet in width on the Paymaster lode along the vein thereof, with all its spurs, dips, variations, and angles, together with the amount of service necessary for working the same and allowed by law, two hundred feet of said lode so located lying and being southwesterly of the discovery shaft on said lode and thirteen hundred feet being northeasterly of said shaft, said lode being situated in Monarch mining dist., county of Lake and State of Colorado, the location and bounds of said claim being marked and described more particularly as follows, to wit: Beginning at the southeast corner of said claim at a post marked No. 1, and running thence (1) N. 35° 30′ E. 750 ft. to E. center post 1,500 feet to cor. No. 2; thence (2) N. 54° 30′ W. 300 ft. to cor. No. 3; thence (3) S. 35° 30′ W. 750 ft. to W. centre post 1,500 ft. to cor. No. 4; thence (4) S. 54° 30′ E. 300 feet to the place of beginning. From cor. No. 1 a double spruce tree 14 inches in diameter bears N. 15° E. 4 feet, and the summit of Banana Mountain bears N. 49° 30′ W., situated on the crest of Limestone Mountain, about ¾ of one mile from the South Arkansas river. The Ben Bolt lode adjoins this claim on the east, corners 4 & 3 of the former being coincident, respectively, with corners 1 & 2 of this claim.

WM. P. SHEPARD.

Recorded Nov'r 25th, A. D. 1878, 12 m.

Plaintiffs' counsel offered in evidence the deed from William Shepard, the locator, to William H. Vangiesen, and also all the
58 deeds purporting to show the title to be in the present plaintiffs, together with plaintiffs' exhibits marked—

Pl'ffs' Ex. Cert. Sec'y State App't'g Not's Public.

" " " " " " " "

" " " R. J. Meigs, Sup. C't Clerk, Cert. N Callan—

Hereinafter contained; to which defendants' counsel objected, because there is nothing in the complaint to show how the title becomes vested in the plaintiffs, which ought to have been done by the complaint or by an abstract of the title; object to the deed from William H. Vangiesen to J. Scott Boyd, Jr., on the ground that the acknowledgment appears to have been taken before one E. B. McCarty, whose authority to act in the capacity of a notary public is not shown, as the statute requires. There is no proof showing that he was a notary at the time he purports to have taken the acknowledgment; and this same objection will apply to the deed from William H. Vangiesen to Harmon W. Hendricks, which deed purported to have been acknowledged before one Haskell, who was commissioned for a term of two years ending March 30th, 1884, and was acting in 1878, in April; also to deed of W. H. Vangiesen to J. R. Magruder; also to deed of W. H. Vangiesen to Haynes, all of which are hereinafter set forth and contained; and also to the deed of John R. Magruder to H. D. Cook, Jr., because there is simply a certificate of the clerk of the supreme court of the District of Columbia that N. Callan was a notary public on that —, but no certificate from the secretary of state. This also applies to the deed of John

R. Magruder to H. D. Cook *et al.*, hereinafter set forth and contained.

59 The COURT: As to the deeds executed at Washington, I believe that the government of the District of Columbia is peculiar and different from any of the other Territories. I think there is a mistake here in writing the figure four instead of a cipher; that is the only mistake there is; in substituting a cipher for the figure four it is all right. I say that mistake was made either in the original commission, or else it was made in copying the commission, and if it was made in the original, and is fatal, there are a good many notaries in New York that have taken acknowledgments that could be attached. I am going to say that the construction of it is this commission was for two years, from 1878 to 1880, and therefore it is apparent that this man was a notary public in New York at that time, and, so far as the deeds are concerned, I am going to admit them; but, as to the deeds executed in the District of Columbia, there is some doubt; the secretary of state would be the proper person with whom to file that commission.

To which ruling of the court with reference to the deeds executed in New York the defendants, by their counsel, then and there duly excepted.

Defendants' counsel then objected to all of the deeds where the source of the title is William Shepard, upon the grounds that there is not sufficient proof of any location which is valid to entitle him to convey; which objection was overruled, and to which ruling the defendants, by their counsel, then and there duly excepted.

Plaintiffs' counsel renewed the offer of introduction of the deed *of the deeds* from John R. McGruder to H. D. Cook, Jr., on the
60 ground that the statute cannot possibly refer to the District of Columbia.

The COURT: I am going to do this: I think that the intent of the Legislature in that act was to have it cover all States and Territories, and that intent would include the District of Columbia, perhaps, as a Territory, although it is termed the District, and has no territorial form of government, and so I will say that is included. That gives rise to the balance of the question. There is no secretary of state in the District of Columbia, and unless the United States statutes contain some provision to the effect that the Secretary of the United States shall be and act as secretary of state of the District of Columbia there is no one who can possibly be meant by our statute in that District, and if there is no such officer, of course, a compliance with this statute would be impossible, and I would not like to exclude a deed upon that technical objection when the highest and best possible evidence, in the absence of a compliance which is impossible, is offered, that the notary was a notary at the time of the execution of the deed. I think that the District of Columbia is really included in the act of the Legislature. There is no secretary of state of that District, and therefore we are compelled to take the next highest and best evidence that we can get of the matter for which the act is framed, to wit, the fact of the legality of the commission of

the notary public or of his being a notary public at the time of his executing the deeds. I may be wrong about this, but that is the way I shall rule.

To which ruling of the court the defendants, by their counsel, then and there duly excepted, and said deeds were
61 marked in evidence as of this date as follows:

Pl'ffs' Ex. C. Deed from William P. Shepard to Wm. H. Van Giesen.
Pl'ffs' Ex. D. Deed from Wm. P. Shepard to James L. Hill.
" " E. Power of att'y, W. H. Van Giesen, to J. L. Hill.
" " F. Deed from W. H. Van Giesen to J. L. Hill.
" " G. " " J. L. Hill to John R. McGruder.
" " H. " " J. L. Hill to Jno. Hulbert.
" " I. " " J. L. Hill to Jno. Hulbert.
" " K. " " J. L. Hill to Jno. Hulbert.
" " L. " " Jno. Hulbert to Judson Bent.
Pl'ffs' Ex. M. Deed from Jno. R. McGruder to Harmon W. Hendricks.
Pl'ffs' Ex. N. Deed from Jno. R. McGruder to John P. Risque.
" " O. " " Jno. Hulbert to Alex. H. Risque.
" " P. Power of att'y, Jno. P. Risque to Jno. R. McGruder.
" " Q. Deed from Jno. P. Risque to John Hulbert.
" " R. " " J. L. Hill to Harmon W. Hendricks.
" " S. " " Jno. R. McGruder to Alex. F. McGruder.
Pl'ffs' Ex. T. Deed from Wm. Roberts & Jno. Hulbert to A. H. Rice.
Pl'ffs' Ex. U. Deed from Jno. R. McGruder to Jno. Hulbert.
" " V. " " R. T. Haines to J. Scott Boyd, Jr.
" " W. " " Jno. Hulbert to Wm. Roberts.
" " X. " " J. L. Hill to Rich. T. Haines.
" " Y. " " Jno. R. McGruder to H. D. Cook, Jr.
Pl'ffs' Ex. Z. Deed from W. H. Van Giesen to Harmon W. Hendricks.
Pl'ffs' Ex. A A. Deed from Wm. H. Van Giesen to J. Scott Boyd, Jr.
Pl'ffs' Ex. B B. Deed from H. D. Cook to Jos. W. Borden.
" " C C. " " Jno. P. Risque to J. R. Magruder.
62 Pl'ffs' Ex. D D. Deed from Wm. H. Van Giesen to R. T. Haines.
Pl'ffs' Ex. E E. Deed from W. P. Sheppard to J. L. Hill.
" " H H. " " J. L. Hill to Wm. H. Van Giesen.

And these deeds, to which defendants especially objected *to* as inadmissible upon the ground that they were not sufficiently authenticated as having been acknowledged before notaries public authorized to act as such, are as follows:

Pl'ffs' Ex. Y. Jno. R. Magruder to H. D. Cook, Jr., as follows, to wit:

This indenture, made the eleventh day of April, in the year one

thousand eight hundred and seventy-nine, between John R. Magruder, of Leadville, Lake county, and the State of Colorado, party of the first part, and H. D. Cooke, Jr., and John W. Carson, of the District of Columbia, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of seven thousand dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said parties of the second part and to their heirs and assigns forever all the following-described mineral lodes or veins, mining, and other claims located in the State of Colorado, to wit: An undivided one-sixteenth ($\frac{1}{16}$) interest in the "Great Monarch" lode, located by John S. Boon and George H. Boon July 17th, 1878, recorded October 15th, 1878, in Book eleven (11), page 354; an undivided
63 one-sixteenth ($\frac{1}{16}$) interest in the "Little Charm" lode, located by Alexander Hogue and N. C. Creed July 17th, 1878, and recorded October 15th, 1878, in Book eleven (11), page 354; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "New Discovery" lode, located by William Shepard and Jesse W. Davis October 15th, 1878, and recorded December 31st, 1878, in Book eleven (11), page 590; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "Chloride" lode, located by William P. Sheppard August 23, 1878, and recorded November 18th, 1878, in Book eleven (11), page 437; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "Little Hattie" lode, located by William P. Shepard and Joseph Dolby September 18th, 1878, and recorded November 25th, 1878, in Book eleven (11), page 462; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "Safety" lode, located by John R. Magruder October 26th, 1878, and recorded December 31st, 1878, in Book eleven (11) of records of Lake county; an undivided three sixty-fourths ($\frac{3}{64}$) interest in the "Iron Ram" lode, located by Joseph Dolby, R. C. Hutchinson, and Jesse W. Davis August 22d, 1878, and recorded November 18th, 1878, in Book eleven (11), page 438; an undivided one thirty-second ($\frac{1}{32}$) interest in the "Paymaster" lode, located by William P. Shepherd Aug-st 28th, 1878, and recorded in Book eleven (11), page 461, November 25th, 1878; an undivided one thirty-second ($\frac{1}{32}$) interest in the "Little Wonder" lode, located by Jesse W. Davis, Joseph Dolby, John Brien, and Peter Caneth September 9th, 1878, and recorded December 30th, 1878, in Book eleven (11), page 574; an undivided one forty-eighth ($\frac{1}{48}$) interest in the "Ben. Bolt" lode, located
64 by Thos. M. Boon, William P. Shepherd, and Thomas Maxwell July 31st, 1878, and recorded October 15th, 1878, in Book eleven (11), page 356; all lying, being, and situate in the Monarch mining district, and county of Lake and State of Colorado, and recorded upon the records of said county, in the books and upon the pages above named; also an undivided one-sixteenth ($\frac{1}{16}$) interest in and to a certain "mill site" and "water right" claimed and located by Jesse W. Davis, and by him conveyed to Wm. H. Van Giesen, by deed, October 22d, 1878, said deed being recorded

October 29th, 1878, in Book 3, page 105, to which reference is hereby made for a more full and particular description, said "mill site" and "water right" being and lying in the Monarch mining district and county of Lake and State of Colorado, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest in the above-mentioned interests, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part and parcel thereof, *and every part and parcel thereof*, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, and unto their heirs and assigns forever.

In witness whereof the said party of the first part has
65 hereunto set his hand and seal the day and year first above written.

JOHN R. MAGRUDER. [SEAL.]

Sealed and delivered in the presence of—
JOHN P. RISQUE,
T. F. CONWAY.

DISTRICT OF COLUMBIA, *County of Washington*, } *ss:*

On this twelfth day of April, in the year one thousand eight hundred and seventy-nine, before me personally came John R. Magruder, who is personally known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] N. CALLAN,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

Clerk's Office of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that N. Callan, Esq., whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the said District, dwelling therein, commissioned, sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said N. Callan and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this District.

66 In testimony whereof I have hereunto set my name and affixed the seal of said court this 16th day of April, A. D. 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Endorsed: Filed for record at 3 p. m., August 16th, 1879. Recorded in Book 6, page 297. Geo. Leonhardy, recorder.

And Plaintiffs' Ex. "Z"—deed, Van Giesen to Hendricks—is in words and figures following:

This indenture, made the fourth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between William H. Van Giesen, of the county of Rio Grande and State of Colorado, of the first part, and Harmon W. Hendricks, of the city and county of New York and State of New York, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of seven thousand five hundred dollars, lawful money of the United States of America, to him in hand paid by the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledg*ment*, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all the following-described mineral lodes or veins, mining, and other claims located in the State of Colorado, to wit:

An undivided one-eighth ($\frac{1}{8}$) interest in the "Great Mon-
67 arch" lode, located by John S. Boon and George H. Boon July 17th, 1878, recorded Oct. 15th, 1878, in Book 11, page 354; the "Little Charm" lode, being an undivided one-eighth interest, located by Alexander Hogue and V. C. Creed July 17th, 1878, and recorded Octo. 15th, 1878, in Book 11, page 354; an undivided one-eighth ($\frac{1}{8}$) interest in the New Discovery lode, located by Wm. Shepherd and Jesse W. Davis Oct. 15th, 1878, and recorded Dec. 31st, 1878, in Book 11, page 590; an undivided one-eighth ($\frac{1}{8}$) interest in the Chloride lode, located by Wm. P. Shepherd August 23d, 1878, and recorded Nov. 18th, 1878, in Book 11, page 437; an undivided one-eighth ($\frac{1}{8}$) interest in the "Little Hattie" lode, located by Wm. P. Shepherd and Joseph Dolby Sept. 18th, 1878, and recorded Nov. 25th, 1878, in Book 11 and page 462; an undivided one-eighth interest in the "Safety" lode, located by William H. Van Giesen Oct. 26th, 1878, and recorded December 31st, 1878, in Book of Records of Lake county; an undivided three thirty-seconds ($\frac{3}{32}$) in the "Iron Ram" lode located by Joseph Dolby, R. C. Hutchinson, and Jesse W. Davis Aug. 22, 1878. and recorded Nov. 18th, 1878, in Book 11, page 438; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "Paymaster" lode, located by Wm. P. Shepherd Aug. 28th, 1878, and recorded November 25th, 1878, in Book 11, page 461; an undivided one-sixteenth ($\frac{1}{16}$) interest in the "Little Wonder" lode, located by Jesse W. Davis, Joseph Dolby, John Brien, and Peter Caneth September 9th, 1878, and recorded December 30th, 1878, in Book 11, page 574; an undivided one twenty-fourth ($\frac{1}{24}$) interest in the Ben. Bolt lode, located by Thomas M. Boon, Wil-
68 liam P. Shepherd, and Thomas Maxwell July 31st, 1878, and recorded Oct. 15th, 1878, in Book 11, page 356; all lying, being, and situate in the Monarch mining district and county of

Lake, and recorded upon the records of said county in the books and upon the pages above named; also an undivided one-eighth interest in and to a certain mill site and water right claimed and located by Jesse W. Davis, and by him conveyed to Wm. H. Van Giesen by deed Oct. 22d, 1878, said deed being recorded Oct. 29th, 1878, in Book E, page 105, to which reference is hereby made for a more full and particular description, said mill site and water right lying and being in the Monarch mining district and county of Lake and State of Colorado; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and to the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest in the said property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM H. VAN GIESEN, [SEAL.]
By JAMES L. HILL, *His Attorney-in-Fact.*

Sealed and delivered in the presence of—

WM. H. BARNARD.

69 STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this fourth day of February, in the year one thousand eight hundred and seventy-nine, before me personally came James L. Hill, attorney-in-fact for William H. Van Giesen, to me known to be the individual described in and who executed the foregoing instrument, and personally acknowledged that he executed the same.

[NOTARIAL SEAL.] T. F. HASCALL, (61)
Notary Public, N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Henry A. Gumbleton, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby — that T. F. Hascall, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument of writing and thereon written, was at the time of taking such proof and acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and further that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and
70 affixed the seal of the said court and county the 4th day of Feb., 1879.

[SEAL.] HENRY A. GUMBLETON, *Clerk.*

Endorsed: Recorded Feb. 22d, 1879, at 5 o'clock p. m. C. Shaul, recorder.

STATE OF COLORADO, } ss:
County of Chaffee, }

I, James H. Johnston, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of a deed, Wm. H. Van Giesen to Harmon W. Hendricks, as the same appears of record in my office.

[SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By FUCO A. SOOP, *Deputy.*

And Plaintiffs' Ex. "A A"—deed, Van Giesen to Boyd, Jr.—is in words and figures following:

Mining Deed.

W. H. Van Giesen to J. Scott Boyd, Jr.

This indenture, made this third day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between William H. Van Giesen, of the county of Rio Grande and State of Colorado, party of the first part, and J. Scott Boyd, Jr., of the county of Lake and State of Colorado, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of three thousand seven hundred and fifty dollars, lawful money of the United States of America, to him in
71 hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns the following mineral lodes or veins and other claims, to wit: The "Great Monarch" lode, located July 17th, 1878, by John S. Boon and George H. Boon, recorded Oct. 15th, 1878, in Book 11, page 354, an undivided one-sixteenth ($\frac{1}{16}$) interest; one undivided one-sixteenth ($\frac{1}{16}$) interest in the "Little Charm" lode, located by Alexander Hogue and V. C. Creed July 17, 1878, recorded Oct. 15th, 1878, in Book 11, page 354; one undivided one-sixteenth ($\frac{1}{16}$) interest in the "New Discovery" lode, located — Wm. Shepherd and Jesse W. Davis Oct. 15th, 1878, recorded Dec. 31st, 1878, in Book 11, page 590; one undivided one-sixteenth ($\frac{1}{16}$) interest in the "Chloride" lode, located by Wm. P. Shepherd Aug-st 23d, 1878, re-

corded Nov. 18th, 1878, in Book 11, page 437; one undivided one-sixteenth ($\frac{1}{16}$) interest in the "Little Hattie" lode, located by William P. Shepherd and Joseph Dolby Sept. 18th, 1878, recorded Nov. 25th, 1878, in Book 11, page 462; one undivided one-sixteenth ($\frac{1}{16}$) interest in the "Safety" lode, located by W. H. Van Geisen Oct. 26th, 1878, recorded Dec. 31st, 1878; an undivided three sixty-fourths ($\frac{3}{64}$) interest in the "Iron Ram" lode, located August 22, 1878, by J. Dolby, R. C. Hutchinson, and Jesse W. Davis, and recorded Nov. 18th, 1878; an undivided one thirty-second ($\frac{1}{32}$) interest in the "Little Wonder" lode, located Sept. 9th, 1878, by J. W. Davis, J. Dolby, J. Brien, and P. Caneth, and recorded
72 Dec. 30, 1878; an undivided one thirty-second ($\frac{1}{32}$) interest in the "Paymaster" lode, located Aug. 28, 1878, by William P. Shepherd, and recorded Nov. 25th, 1878, in Book 11, page 461; an undivided one forty-eighth ($\frac{1}{48}$) in the Ben. Bolt lode, located July 31, 1878, by T. M. Boon, Wm. P. Shepherd, and Thomas Maxwell, recorded Oct. 15th, 1878, in Book 11, page 356, all of the above lodes being in Lake county and in the Monarch mining district and recorded upon the records of said county; also $\frac{1}{16}$ int. in a certain mill right and water privilege mentioned and described in Jesse W. Davis' deed to me, recorded October 29, 1878, in Book F, page 105, the Iron Ram lode being recorded in Book 11, page 438, and Little Wonder recorded in Book 11, page 574; together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever, the whole of the above mining property lying and being in the State of Colorado.

73 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM H. VAN GEISON, [SEAL.]
By JAMES L. HILL, *His Attorney-in-Fact.*

Signed, sealed, and delivered in presence of—
E. R. McCARTY.

STATE, COUNTY, AND CITY OF NEW YORK, *ss:*

I, E. R. McCarty, a notary public in and for said county, in the city of N. Y. aforesaid, do hereby certify that Jas. L. Hill, attorney-in-fact for William H. Van Gieson, personally known to me as the

person whose name is subscribed to the within or preceding deed, appeared before me this day in person and acknowledged that *that* he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth; and the said ——, wife of the said ——, having been by me examined separate and apart and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her husband, and that she does not wish to retract the same.

Given under my hand and my seal this 3d day of February, A. D. 1879.

E. R. McCARTY (No. 58),
Notary Public in and for City & County of New York.

Endorsed: Recorded February 22, A. D. 1879, at 11 a. m. E. Shaul, recorder.

74 STATE OF COLORADO, } *ss:*
County of Chaffee, }

I, James H. Johnston, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of a deed, Wm. H. Van Geison to J. Scott Boyd, Jr., as the same appears of record in my office.

Witness my hand and official seal this 9th day of May, A. D. 1882.

[SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder.
By FINO A. SOOP, *Deputy.*

And Plaintiffs' Ex. "D. D."—deed, Van Geison to Magruder—is in words and figures following:

This indenture, made the fifteenth day of February, in the year one thousand eight hundred and seventy-nine, between William H. Van Geison, of the county of Rio Grande and State of Colorado, party of the first part, and John R. Magruder, of Lake county, Colorado, party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all the following-described mineral lodes or veins, mining and other claims,
75 located in the State of Colorado, to wit: An undivided one-fourth (¼) interest in the "Great Monarch" lode, — by J. S. Boon and George H. Boon July 17, 1878, recorded Oct. 15th, 1878, in Book 11, page 354; the "Little Charm" lode, being an undi-

vided one-fourth ($\frac{1}{4}$) interest, located by Alexander Hogue and N. C. Creed July 17th, 1878, and recorded October 15th, 1878, in Book 11, page 354; an undivided one-fourth ($\frac{1}{4}$) interest in the "New Discovery" lode, located by Wm. Shepherd and Jesse W. Davis Oct. 15th, 1878, and recorded Dec. 31st, 1878, (*and recorded*) in Book 11, page 590; an undivided one-fourth ($\frac{1}{4}$) interest in the "Chloride" lode, located — Wm. P. Shepherd Aug'st 23d, 1878, and recorded Nov. 18, 1878, in Book 11, page 437; an undivided one-fourth ($\frac{1}{4}$) interest in the "Little Hattie" lode, located by Wm. P. Shepherd and Joseph Dolby Sept. 18, 1878, and recorded Nov. 25th, 1878, in Book 11, page 462; an undivided one-fourth ($\frac{1}{4}$) interest in the "Safety" lode, located by Wm. H. Van Geison October 26, 1878, and recorded Dec. 31st, 1878, in Book of Records of Lake county; an undivided three-sixteenths ($\frac{3}{16}$) in the "Iron Ram" lode, located by Joseph Dolby, R. C. Hutchinson, and Jesse W. Davis Aug. 22, 1878, and recorded Nov. 18, 1878, in Book 11, page 438; an undivided one-eighth ($\frac{1}{8}$) interest in the "Paymaster" lode, located by Wm. P. Shepherd Aug. 28, 1878, and recorded Nov. 25, 1878, in Book 11, page 461; an undivided one-eighth ($\frac{1}{8}$) interest in the "Little Wonder" lode, located by Jesse W. Davis, Joseph Dolby, John Brien, and Peter Caruth Sept. 9, 1878, and recorded Dec. 30, 1878, in Book 11, page 574; an undivided one-twelfth interest ($\frac{1}{12}$)

interest in the "Ben. Bolt" lode, located by Thomas M. Boon,
76 William P. Shepherd, and Thomas Maxwell July 31, 1878, and recorded Oct. 15th, 1878, in Book 11, page 356, all lying, being, and situate in the Monarch mining district and county of Lake and recorded upon the records of said county in the books and upon the pages above named; also an undivided one-fourth ($\frac{1}{4}$) interest in and to a certain mill site and water right claimed and located by Jesse W. Davis and by him conveyed to Wm. H. Van Gieson by deed Oct. 22d, 1878, said deed being recorded Oct. 29th, 1878, in Book 3, page 105, to which reference is hereby made for a more full and particular description, said mill site and water right lying and being in the Monarch mining district and county of Lake and State of Colorado, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, — interest in said property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM H. VAN GIESON,
By his attorney-in-fact, JAS. L. HILL.

Sealed and delivered in presence of—

E. R. McCARTY.

77 STATE OF NEW YORK, } ss:
City of New York, County of New York, }

On the fifteenth day of February, in the year one thousand eight hundred and seventy-nine, before me personally came Jas. L. Hill, attorney-in-fact for Wm. H. Van Gieson, to me known to be the individual described in and who executed the foregoing instrument, and that he acknowledged that he executed the same for purposes therein mentioned.

[NOTARIAL SEAL.] E. R. McCARTY,
Notary Public in and for City & County of N. Y.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Henry A. Gumbleton, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that E. R. McCarty, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof and acknowledgment a notary public in and for the city and county of New York dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine; I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 5th day of M'ch, 1879.

[NEW YORK SEAL.] HENRY A. GUMBLETON, *Clerk.*

78 Recorded March 25th, 1879, at 11.45 o'clock a. m.
GEO. LEONHARDY, *Recorder.*

STATE OF COLORADO, } ss:
County of Chaffee, }

I, James H. Johnston, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of a deed, Wm. H. Van Gieson to John R. Magruder, as the same appears of record in my office.

Witness my hand and official seal this 9th day of May, A. D. 1882.

[SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By FINO A. SOOP,
Deputy Recorder.

And Plaintiffs' Ex. "E E"—deed, Magruder to Cooke, Jr.—is in words and figures following:

Quitclaim Deed.

John R. Magruder to H. D. Cooke, Jr., *et al.*

This indenture, made the eleventh day of April, in the year one thousand eight hundred and seventy-nine, between John R. Magruder, of Leadville, Lake county, and the State of Colorado, party of the first part, and H. D. Cooke, Jr., and John W. Carson, of the District of Columbia, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of seven thousand dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these
79 presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said parties of the second part and to their heirs and assigns forever all the following-described mineral lodes or veins, mining, and other claims located in the State of Colorado, to wit: An undivided one-sixteenth ($\frac{1}{16}$) interest in the "Great Monarch" lode, located by John S. Boon and George S. Boon July 17th, 1878, recorded Oct. 15th, 1878, in Book eleven (11), page 354; an undivided one-sixteenth ($\frac{1}{16}$) interest in the Little Charm lode, located by Alexander Hogue and N. C. Creed July 17th, 1878, and recorded October 15th, 1878, in Book eleven (11), page 354; an undivided one-sixteenth ($\frac{1}{16}$) interest in the New Discovery lode, located by William Shepherd and Jesse W. Davis October 15th, 1878, and recorded December 31st, 1878, in Book eleven (11), page 590; an undivided one-sixteenth ($\frac{1}{16}$) interest in the Chloride lode located by William P. Shepherd August 23, 1878, and recorded November 18th, 1878, in Book eleven (11), page 437; an undivided one-sixteenth ($\frac{1}{16}$) interest in the Little Hattie lode, located by William P. Shepherd and Joseph Dolby September 18th, 1878, and recorded November 25th, 1878, in Book eleven (11), page 462; an undivided one-sixteenth ($\frac{1}{16}$) interest in the Safety lode, located by John R. Magruder October 26th, 1878, and recorded December 31st, 1878, in Book eleven (11) of records of Lake county; an undivided three sixty-fourths ($\frac{3}{64}$) interest in the Iron Ram lode located by Joseph Dolby, R. C. Hutchinson, and Jesse W. Davis August 22d, 1878, and recorded November 18th, 1878, in Book
80 eleven (11), page 438; an undivided one thirty-second ($\frac{1}{32}$) interest in the Paymaster lode, located by William P. Shepherd August 28th, 1878, and recorded in Book eleven (11), page 461, November 25th, 1878; an undivided one thirty-second ($\frac{1}{32}$) interest in the Little Wonder lode, located by Jesse W. Davis, Joseph Dolby, John Brien, and Peter Caneth September 9th, 1878, and recorded December 30th, 1878, in Book eleven (11), page 574; an undivided one forty-eighth ($\frac{1}{48}$) interest in the Ben. Bolt lode, located by Thomas M. Boon, William P. Shepherd, and Thomas Maxwell July 31st, 1878, and recorded October 15th, 1878, in Book eleven (11), page 356; all lying, being, and situate in the Monarch mining district and county of Lake and State of Colorado,

and recorded upon the records of said county in the books and upon the pages above named; also an undivided one-sixteenth ($\frac{1}{16}$) interest in and to a certain mill site and water right claimed and located by Jesse W. Davis, and by him conveyed to Wm. H. Van Giesen, by deed, October 22d, 1878, said deed being recorded October 29th, 1878, in Book 3, page 105, to which reference is hereby made for a more full and particular description, said mill site and water right being and lying in the Monarch mining district and county of Lake and State of Colorado, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest in the above-mentioned interests, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of,
81 in, or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part and unto their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN R. MAGRUDER. [SEAL.]

Signed, sealed, and delivered in the presence of—
T. F. CONWAY.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

On this twelfth day of April, in the year one thousand eight hundred and seventy-nine, before me personally came John R. Magruder, who is personally known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] N. CALLAN,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

Clerk's Office of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that N. Callan, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereupon written, was at the time of taking such proof or acknowledgment a notary public in and for the said District, dwelling therein, commis-
82 sioned, sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said N. C. Callan and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this District.

In testimony whereof I have hereunto set my name and affixed the seal of said court this 16th day of April, A. D. 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
By M. A. CLANCEY,
Assistant Clerk.

Endorsed: Recorded August 16, 1879, at 3 p. m. Geo. Leonhardy, recorder, by F. B. Woodhouse, deputy.

STATE OF COLORADO, } ss:
County of Chaffee, }

I, James H. Johnston, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of a deed, John R. Magruder to H. D. Cook, Jr., and John W. Carson, as the same appears of record in my office.

Witness my hand and official seal this 9th day of May, A. D. 1882.

[SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By FINO A. SOOP, *Deputy.*

And Plaintiffs Ex. "F. F."—deed, Van Giesen to Haynes—is in words and figures following:

83 *Quitclaim Deed.*

William H. Van Giesen to Richard T. Haines.

This indenture, made the tenth day of February, in the year one thousand eight hundred and seventy-nine, between William H. Van Giesen, of the county of Rio Grande and State of Colorado, party of the first part, and Richard T. Haines, of the city, county and State of New York, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of three thousand seven hundred and fifty dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents doth remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all the following-described mineral lodes or veins, mining, and other claims located in the State of Colorado, to wit: An undivided one-sixteenth interest in the Great Monarch lode, located by John S. Boon and George H. Boon July 17, 1878, recorded October 15th, 1878, in Book eleven, page 354; also an undivided one-sixteenth interest in the Little Charm lode, located by Alexander Hogue and N. C. Creed July 13th, 1878, and recorded October 15th, 1878, in Book 11, page 354; also an undivided one-sixteenth interest in the New Discovery lode, located by William Shepherd and Jesse W. Davis October 15th, 1878, and recorded December 31st, 1878, in Book 11, page 590; also an undivided one-sixteenth inter-

84 est in the Chloride lode, located by William P. Shepherd August 23d, 1878, and recorded November —,1878, in Book 11, page 437; also an undivided one-sixteenth in the Little Hattie lode, located by William P. Shepherd and Joseph Dolby September 18th, 1878, and recorded November 25th, 1878, in Book 11 and page 462; also an undivided one-sixteenth interest in the Safety lode, located by William H. Van Giesen Oct. 26th, 1878, and recorded December 31st, 1878, in Book of Records of Lake county; also an undivided three sixty-fourths interest in the Iron Ram lode, located by Joseph Dolby, R. C. Hutchinson, and Jesse W. Davis Aug. 23d, 1878, and recorded Nov. 18th 1878, in Book 11, page 438; also an undivided one thirty-second interest in the Paymaster lode, located by William P. Sheppard Aug. 28th, 1878, and recorded Nov. 25th, 1878, in Book 11, page 461; also an undivided one thirty-second interest — the Little Wonder lode, located by Jesse W. Davis, Joseph Dolby, John Brien, and Peter Caneth Sept. 9th, 1878, and recorded Dec. 11th, 1878, in Book 11, page 574; also an undivided one forty-eighth interest in the Ben. Bolt lode, located by Thomas M. Boon, William P. Sheppard, and Thomas Maxwell July 31, 1878, and recorded Oct. 15th, 1878, in Book 11, page 356; all lying, being, and situate in the Monarch mining district, county of Lake, and recorded upon the records of said county in the books and upon the pages above named; also an undivided one-sixteenth interest in and to a certain mill site and water right claimed and located by Jesse W. Davis, and by him conveyed to William H. Van Giesen by deed Oct. 22d, 1878, said deed being recorded Oct. 29th, 1878, in Book E, page 105, to which reference is hereby made for a more full and particular description, said mill site and water right lying and being
85 in the Monarch mining district and county of Lake and State of Colorado; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest in the said property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM H. VAN GIESEN, [SEAL.]
By JAMES L. HILL, *His Attorney-in-Fact.*

Sealed and delivered in the presence—

—— ——.

The words one-sixteenth, on first page erase-, and the words one thirty-second inserted before execution, the same being in the thirtieth line of said page.

T. F. HASCALL.

STATE OF NEW YORK, } ss:
City of New York, County of New York, }

On this eleventh day of February, in the year one thousand eight hundred and seventy-nine, before me personally came James L. Hill, known to me to be the attorney-in-fact of William H. Van Giesen, the individual described in and who executed the within conveyance by his attorney, and the said James L. Hill acknowledged
86 that he executed the same as the act and deed of the said William H. Van Giesen.

T. F. HASCALL, (61)
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Henry A. Gumbleton, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that T. F. Hascall, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument of writing and thereon written, was at the time of taking such proof and acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioner and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my *seal* and affixed the seal of the said court and county the 12th day of Feb., 1879.

[NEW YORK SEAL.] HENRY A. GUMBLETON, *Clerk.*

Endorsed: Recorded February 22d, A. D. 1879, at 11 a. m. E. Shaul, recorder.

STATE OF COLORADO, } ss:
County of Chaffee, }

I, James H. Johnston, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of a deed, Wm. H. Van
87 Giesen to Richard T. Haynes, as the same appears of record in my office.

Witness my hand and official seal this 10th day of May, A. D. 1882.

[SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By FINO A. SOOP,
Deputy "

Plaintiffs' Ex. Jos. B. Carr, Sec'y of State, Certif. of Magistracy of Theodore F. Hascall *et al.*, as follows:

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, Greeting:

Know ye that we have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, James W. Hoey, William J. Harding, John Hewitt, J. Horner Hildreth, George H. Holt, Bernard Hess, Frederick Hess, Theodore F. Hascall, William J. Herron, J. Sterrick Henry, all of the city of New York (for the term of two years ending March 30, 1884), to be notaries public in and for the county of New York, hereby giving and granting unto them all and singular the powers and authorities to the said office by law belonging or appertaining; to have and to hold the said office, together with the fees, profits, and advantages to the same belonging, for and during the time limited by the constitution and laws of our said State.

In testimony whereof we have caused these our letters to be made patent and the great seal of our said State to be hereunto affixed.

88 Witness Lucius Robinson, Governor of our said State (with the consent of our senate), at our city of Albany, the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

DAVID C. ROBINSON,
Private Secretary.

Attested by—
EDGAR K. UPGAR,
Dep. Secretary of State.

The United States of America, State of New York, by Joseph B. Carr, secretary of state and custodian of the great seal thereof:

This — to certify that I have compared the preceding copy of commission with the record thereof in this office, in Book number 15 of Commissions, at page 185, and I do certify the same to be a correct transcript therefrom and of the whole thereof.

In testimony whereof the great seal of the State is hereby affixed.

Witness my hand, at the city of Albany, the twenty-third day of August, in the year of our Lord one thousand eight hundred and eighty-two.

JOSEPH B. CARR,
Secretary of State.

STATE OF COLORADO, }
County of Chaffee, } *ss:*

I, James H. Johnston, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of notarial appointment of James W. Hoey, William J. Harding, John Hewitt, J. Horner Hildreth, George H. Holt,

Bernard Hess, Frederick Hess, Theodore F. Hascall, William J. Heron, J. Herrick Henry, filed for record in my office at 4.30 o'clock p. m., Nov. 14th, 1882.

89 Witness my hand and official seal this 15th day of Nov., A. D. 1882.

[OFFICIAL SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By W. C. HATTON,
Deputy Recorder.

And Plaintiffs' "Ex." Certificate of R. J. Meigs, Clerk of the Supreme Court of the District of Columbia, as to Magistracy of N. Callan, as follows, to wit:

DISTRICT OF COLUMBIA, *ss:*

CLERK'S OFFICE OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that N. Callan was a notary public for the District of Columbia on the 12th day of April, 1879.

[SUPREME COURT SEAL.] R. J. MEIGS,
Clerk of the Supreme Court of the District of Columbia.

STATE OF COLORADO, }
County of Chaffee, } *ss:*

I, James H. Johnston, county clerk and recorder in and for said county, in said State aforesaid, do hereby certify that the foregoing is a true and correct copy of certificate filed in my office for record at 4.30 o'clock p. m., Nov. 14th, 1882.

Witness my hand and official seal this 15th day of November, A. D. 1882.

[OFFICIAL SEAL.] JAMES H. JOHNSTON,
Clerk and Recorder,
By W. C. HATTON, *Deputy.*

And Plaintiffs' Ex. Certif. of Sec'y of State of N. Y. as to Magistracy of Edwin R. McCarty *et al.*, in words and figures as follows, to wit:

90 The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, Greeting:

Know ye that we have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, Thomas J. Macovey, Henry S. Moore, Benjamin S. Merritt, Robert R. Morrison, Edwin R. McCarty, Henry Maurer, George B. Morris, Max Moses, Joseph H. Meredith, Theodore F. H. Meyer, all of the city of New York (for the term of two years ending March 30th, 1884), to be notaries public in and for the county of New York, hereby giving and granting unto them all and singular the powers and authorities

to the said office by law belonging or appertaining; to have and to hold the said office, together with the fees, profits, and advantages to the same belonging, for and during the time limited by the constitution and laws of our said State.

In testimony whereof we have caused these our letters to be made patent and the great seal of our said State to be hereunto affixed.

Witness Lucius Robinson, Governor of our said State (with the consent of our senate), at our city of Albany, the fourteenth day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

D. C. ROBINSON,
Private Secretary.

Attested by—
GEO. MOSS,
Deputy Secretary of State.

United States of America, State of New York, by Joseph B. Carr, secretary of state and custodian of the great seal thereof:

91 This is to certify that I have compared the preceding copy of commission with the record thereof in this office, in Book number 14 of commissions, at page 335, and I do hereby certify the same to be a correct transcript therefrom and the whole thereof.

In testimony whereof the great seal of the State is hereunto affixed.

Witness my hand, at the city of Albany, the twenty-third day of August, in the year of our Lord one thousand eight hundred and eighty-two.

JOSEPH B. CARR,
Secretary of State.

STATE OF COLORADO, } ss:
County of Chaffee, }

I, James H. Johnston, clerk and recorder in and for said county, in the State aforesaid, do hereby certify the within and foregoing is a true and correct copy of notarial appointment of Thomas J. Mascovey, Henry S. Moore, Benjamin S. Merritt, Robert A. Morrison, Edwin R. McCarty, Henry Maurer, George B. Morris, Max Moses, Joseph H. Meredith, Theodore F. H. Meyer, filed for record in my office at 4.30 o'clock p. m., Nov. 14th, A. D. 1882.

Witness my hand and official seal this 15th day of November, A. D. 1882.

[OFFICIAL SEAL.]

JAMES H. JOHNSTON,
Clerk and Recorder,
By W. C. HATTON, *Deputy.*

THOMAS PENROSE, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. What is your full name, sir?
A. Thomas Penrose.

Q. Where do you live?
A. Chaffee.
92 Q. What is your business?
A. Mining, sir.
Q. How long have you been a miner?
A. Seventeen years.
Q. Are you familiar with the Monarch mining district, in Chaffee county?
A. Yes, sir; a little.
Q. How long have you been in that district?
A. I have been there for three years.
Q. Are you acquainted with the Paymaster lode?
A. Yes, sir.
Q. When did you become acquainted with that lode?
A. In 1879.
Q. In what way did you become acquainted with it in 1879, sir?
A. I used to work there.
Q. Who did you work for, sir?
A. I worked for Mr. Hill, and Mr. Greenleaf was foreman there.
Q. What work did you do there in 1879, sir?
A. I sunk a shaft, sir.
Q. How far?
A. I think we went down thirty-five feet.
Q. You sunk in thirty-five feet further, or thirty-five feet from the surface?
A. Somewhere about there.
Q. You sunk it thirty-five feet?
A. Yes, sir.
Q. What kind of rock was this shaft sunk through, sir?
A. Lime rock.
Q. What was its condition as to being in place?
A. The rock was in place.
Q. Was there any mineral show in that shaft; if so, what?
A. Yes, sir.
Q. What sort of mineral?
A. Galena and carbonates.
Q. In what shape was this—scattered, or in the shape of a vein?
A. In the shape of a vein.
Q. In a vein in rock in place?
A. Yes, sir.
Q. From your knowledge of that country, what would the galena carry?
93 A. It carries lead.
Q. Does the galena in that county generally carry silver?
A. Yes, sir; I think it does; I never had any assays made; I don't know anything about it.
Q. What was the character of the rock in that shaft, sir, at a depth commencing about ten feet?
A. It was lime rock in the bottom when I started.
Q. When you started?
A. Yes, sir.

Q. What was the depth of the shaft when you started?
A. It was ten or eleven feet; I can't say exactly.
Q. When did you start, sir—in what month, if you remember?
A. In June, 1879.
Q. State whether any work was done previous to that time, that year.
A. No, sir; there was nothing done.
Q. What was the value of that shaft you sunk in 1879?
A. ——.

Cross-examination by Mr. SHARMAN:

Q. What time in 1879 did you go to work there, Mr. Penrose?
A. It was in June, 1879.
Q. That is the first acquaintance you had with the claim, was it?
A. Yes, sir.
Q. Do you know where that shaft is situated with reference to the side lines, or either of them, on the claim?
A. No, sir; I don't know anything about that.

J. J. HOLBROOK, called and sworn on the part of plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

94 Q. What is your full name?
A. James John.
Q. Where do you reside?
A. Chaffee.
Q. What is your business?
A. Mining.
Q. How long have you been a miner?
A. Off and on for about twenty-three years.
Q. Are you familiar with the Monarch mining district in Chaffee county?
A. I have had over three years' acquaintance with the district.
Q. Do you know the Paymaster lode, claimed by Boyd and Haines and others, in that district?
A. Yes, sir; I have had charge of it for quite a time.
Q. When were you first there, Mr. Holbrook?
A. At the Paymaster lode?
Q. Yes, sir.
A. In the fall of 1879.
Q. What did you find there, sir, in the shape of mineral, if anything?
A. I saw a deep shaft and a large pile of mineral all around it.
Q. Did you see any mineral in the shaft itself?
A. I didn't go down into the shaft itself at that time, but I saw clearly all down the sides, as far as I could see.
Q. Are you an assayer, Mr. Holbrook?
A. Yes, sir.
Q. Did you ever assay any mineral from that claim?
A. Yes, sir.
Q. When?

A. I think late in the fall of—perhaps it might be quite in the winter of that year.

Q. 1879?

A. Yes, sir.

Q. What did the mineral contain, sir, in the shape of silver and lead?

A. Well, I didn't assay it for lead, but I know it contained a good deal of lead, because it was free of galena ore, and it increased the button very heavily in lead, and it carried silver—about twenty ounces.

95 It is admitted by defendants' counsel that there was silver-bearing mineral in the shaft late in the fall of 1879.

JOHN HULBERT, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. Are you one of the plaintiffs in this case?

A. Yes, sir.

Q. Are you acquainted with J. Scott Boyd?

A. Yes, sir.

Q. Richard T. Haines, Judson Bent, John P. Risque, Alexander H. Rice, William Roberts, J. R. McGruder, J. W. Borden, H. W. Hendricks, H. D. Cook, Jr., and Alexander McGruder?

A. Yes, sir; I am acquainted with them all.

Q. Are they citizens of the United States?

A. Yes, sir.

Cross-examination by Mr. SHARMAN:

Q. How do you know?

A. Call them off personally and I will tell you.

And thereupon the plaintiffs rested their case and defendants' counsel moved the court for a nonsuit herein, as per motion on file in this case, which is as follows:

In the District Court of the Fourth Judicial District in and for the County of El Paso.

J. SCOTT BOYD *et al.*, Plaintiffs,

vs.

W. M. QUIMBY *et al.*, Defendants.

Now come the defendants, W. M. Quimby and John S. Boon, and move the court for a nonsuit herein, for the reason that there is no sufficient evidence to entitle the plaintiffs to recover.

96 W. J. SHARMAN, with whom is
J. L. WILLIAMS,
Att'ys for Def'ts Quimby & Boon.

Which motion the court overruled, and to which ruling of the court the defendants, by their counsel, then and there duly excepted;

and thereupon the court, against the objection of the defendants, W. M. Quimby and J. S. Boon, to the sufficiency of the pleadings and proofs of plaintiffs, required the said defendants to produce evidence in defense and in support of their answer to complaint of plaintiffs; to which ruling of the court the said defendants then and there excepted at the time; and thereupon the defendants, to maintain the issues herein on their behalf, gave in evidence as follows—that is to say:

JOHN S. BOON, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. SHARMAN:

Q. Your name in full is John S. Boon?
A. Yes, sir.
Q. Are you acquainted with the plaintiffs and defendants in this case?
A. I know the defendants and most all the plaintiffs.
Q. You are one of the defendants, are you not?
A. Yes, sir.
Q. Are you acquainted with William Sheppard?
A. Yes, sir.
Q. When did you first make his acquaintance?
A. In the year 1874 or 1875. I wouldn't be certain which.
Q. Where?
A. In Chaffee county.
Q. Are you acquainted with a piece of property styled the Paymaster?
A. Yes, sir.

97 Q. You may state whether you have knowledge of any connection of William Sheppard with that claim; and, if so, state fully the circumstances.

A. William Sheppard came into the Monarch mining district in August, 1878, and he prospected around there and run around through the hills and couldn't find any claim to suit him or ground to find mineral on, and came to me and wanted to——

Objected to by plaintiffs' counsel because this is prior to the location of the Paymaster.

COURT: State what you know about the location of the Paymaster lode or the attempted location by Sheppard.

A. I would have to go and tell this other to make the connection.

COURT: You needn't explain anything before that at all. Do you know of his attempted location of the Paymaster lode?

A. About the first of September there was a location made on the hill and I heard of the new strike of mineral, and I went there and he was on the property that I had located and put in my brother's name, T. M. Boon.

Q. What property was that?
A. That was the Ben. Bolt.
Q. Well?

A. And I gave him notice——

Objected to by plaintiffs' counsel because there is no controversy between the Ben. Bolt and the Paymaster.

COURT: Confine yourself, Mr. Witness, to what you know about his attempt to locate the Paymaster lode. Are these two lodes the same?

A. They were at the time he put the stake on it; the Ben. Bolt was the original claim and the Paymaster stake was on the Ben. Bolt ground.

98 COURT: Well, go ahead and just tell what you know about Sheppard's locating the Paymaster lode.

A. Well, about the first of September I went onto the hill, and there was a stake there called the Paymaster lode, with N. C. Creed and William Sheppard's name on, and I believe that is all I can say; I seen it there; that was about the first of September.

Q. Was that or was it not on the Ben. Bolt ground?

Objected to by plaintiffs' counsel, which objection the court overruled; to which ruling of the court the plaintiffs, by their counsel, then and there duly excepted.

A. Yes, sir.

Q. Now, what did you see—a shaft there or just a stake?

A. There was a hole there between three and four feet deep—just about four feet on the upper side—four feet and a half.

Q. That was where you saw this stake, was it?

A. Yes, sir.

Q. Did you see any other hole there at any other time?

A. Five or six.

Q. Since or before, either?

A. I seen another hole there since, close by there.

Q. Well, on the claim that was sunk, or claimed to have been sunk by Sheppard?

A. No, sir.

Q. That was what was called the original Paymaster shaft, was it?

A. The discovery; yes, sir.

Q. And that, you say, was four or five feet deep?

A. It wasn't five on the upper side of it—four and a half, probably; four or four and a half.

Q. Now, describe what it was, the dimensions and every-
99 thing about it, and how long it remained in that condition that you saw it first.

A. Well, it is about four feet and a half wide and about six feet of a bottom, and about four feet and a half high at that time—when Sheppard was there.

Q. Now, was there any other shaft sunk by Sheppard as a discovery shaft?

A. No, sir.

Q. That was the one upon which the location was claimed to have been made, was it?

A. Yes, sir.

Q. When did you last see that, Mr. Boon—this particular shaft?
A. It was about the first of November that I seen that part of the work that Sheppard done.
Q. What year?
A. 1878.
Q. That was about the first of November?
A. Yes, sir; I wouldn't be certain about the first day of November—the latter part of October; it was October or November.
Q. And the dimensions of that shaft, as you have described, were as they existed on the first of November?
A. Yes, sir. I wouldn't be positive about the first of November; the latter part of October or the first of November; he had it in his location certificate.
Q. Did Sheppard do any more work on that shaft?
A. I never seen him do any work on it.
Q. If he had you would have known it at the time?
A. I would have known if I was there.
Q. Were you there so you could tell?
A. Yes, sir.
Q. When did you see any one working on that shaft?
A. Well, I didn't see any working upon it; but then, along in December, I went up onto the hill, and there had been some more work done on it; it might have been in the latter part of November; there had been some more work done on it—a couple of feet more work done on it.
Q. How much?
A. Two feet probably.
Q. Two feet?
A. Yes, sir.
Q. That was in December or the last of November you think?
A. Yes, sir.
Q. I will ask you to state if you saw any stakes there—boundary stakes of the Paymaster?
A. Not until after the first of November.
Q. Not until after the first of November?
A. No, sir.
Q. How long prior to the first of November had you been there?
A. I had been there among the first men in the camp, from the 16th to the 18th of July.
Q. You never saw any stakes there until the first of November?
A. No, sir; I did not.
Q. State how near to the side lines of the Paymaster was this discovery shaft, so called?

Objected to by plaintiffs' counsel because the witness has stated he didn't see any stakes, and consequently does not know where the side lines of the Paymaster were; which objection the court overruled.

WITNESS: At what time were you asking about the stakes?
Q. At the time you went up there, in November?
A. The latter part of November?

Q. Yes, sir.

A. Well, the stakes were in the same place, but I didn't see it surveyed and located.

101 Q. Were the stakes purporting to be the Paymaster stakes that you saw?

A. Yes, sir; I knew where they were at that time.

Q. I am asking you with reference to those stakes—how near they were to the boundary line of the discovery shaft?

A. I have been with the other surveys and I can't mind; it was either thirty-five feet or forty-seven and a half; I wouldn't be positive.

Q. How far from the other side line?

A. Well, it would be two hundred and sixty-five feet or else two hundred and fifty-two and a half, if I am not mistaken; whichever it was I am not positive; it would be either one.

Q. To which side line was the shaft nearer?

A. To the southeast side line.

Q. Did you see any work done on the Paymaster in the year following that?

A. 1878?

Q. Yes, sir.

A. Yes, sir; I did.

Q. Was that in the same shaft?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Where was that, relative to the discovery shaft?

A. It was southeast or southwest from the discovery shaft.

Q. How far?

A. It was something like five or six feet from either edge.

Q. Did you see any strike there?

A. There was a board nailed on the east of the windlass at that time, but it was disfigured; it was worn off.

Q. What was on that board?

A. Well, it was a location of the Paymaster again.

102 Q. By whom?

A. By—William Sheppard's name was on it, and, I think, Van Giesen—William H. Van Giesen, if I am not mistaken.

Q. Now, I understand you to say that shaft—the second which you refer to—was not begun until 1879?

A. Yes, sir.

Q. That is a fact, is it?

A. Yes, sir.

Q. Then, nothing had been done up to the time you were there in 1879 save the seven or eight feet?

Objected to by plaintiffs' counsel because leading. Objection overruled.

A. That is all.

Q. Well, how is the fact about that now. Just state it. How much was done?

A. In the spring of 1879 and in 1878?

Q. Yes, sir.

A. Shepherd done between four feet and five feet, and afterwards there was about two feet of work done, may be two and a half, on the outside. It would make something like seven feet of a face on an adit.

Q. It was an adit, was it?

A. It was partly dug down; after it started in it dug down maybe two feet, and maybe a little over. I could stand in it and reach to the top of the ground, and I can't reach over seven feet, and the condition of the claim next spring was about the same; I couldn't see there was any other work done since the last of November.

Q. That was in 1879?

A. That was in 1878.

Q. When do you refer to the condition being the same?

A. I refer to the work altogether that had been done on it when Shepherd worked on it and other parties. I don't know
103 whether Shepherd had it done or not, or whether Mr. Van Giesen had it done. It made seven feet that had been done in 1878, and the first of May or latter part of April, 1879, there was about seven feet of work all told—seven feet of the face of an adit.

Q. When did you begin work in 1879 on this other shaft?

A. May or June.

Q. Did you see that work as it progressed?

A. Yes, sir.

Q. Just state what the depth of that shaft was.

A. I think when they quit work it was about forty-five feet deep; that was in the fall of, 1879.

Q. Now, when did you next see that shaft after the time you have spoken of, in 1879?

A. I seen the shaft several times in the year 1880 and the fall of 1880; about September, I believe it was, or October, I was in the shaft. I went to see how much ore there was. I didn't know but I was intruding. It was timbered up and I couldn't see none. It was in the same condition it was in the fall before.

Q. In 1879?

A. Yes, sir.

Q. Now, then, when did you next see any work done on that second shaft?

A. I think it was about the latter part of July, in 1881, or the first of August; I wouldn't be certain as to the date; it was somewhere from the 27th of July till the fifth of August.

Q. Do you know of any work having been done in 1880 in that shaft? And, if so, state what it was.

A. Yes, sir; from the time I was there, in the fall of 1880, until the spring or July, 1881, there was ten feet of a drift run off in that shaft.

Q. Ten feet of work done in the shape of a drift in that shaft from the time you saw it, in 1880, up to 1881, in July?

A. Yes, sir; July or the first of August.

104 Q. What character of ground did that drift run through?

A. It ran—the drift was about six feet high, and it was was about three feet and a half wide. I don't know as I ever measured the width of the drift or the height of it, and it was ten feet long, because I seen that part of it measured, and it was very easy picking ground. There was ore, galena and carbonates of lead and iron, and some gangue in the spur.

Q. You say you measured the length of it; who was with you, if any one, at the time you measured it?

A. I wouldn't be certain whether it was Mr. Monogue or Mr. Quimby or ——; it was one or the other of the parties.

Q. Either Mr. Quimby or Mr. Monogue?

A. Yes, sir.

Q. Did either or both of those gentlemen assist you in making the measurements of the length of this drift?

A. Yes, sir; there was one of them; I wouldn't be positive which; it was either one of them that were present at that time; there might have been other parties there.

Q. What did you measure it with?

A. A tape line.

Q. Did you measure it clear into the end; was there an equal face on it at the end?

A. No, sir; the top of it set back a little further than the lower part, from the middle down.

Q. The top was a little further in than the lower?

A. Yes, sir.

Q. What part did you measure?

A. The furthest point on the top; it lacked an inch or two of being ten feet, but we called it ten feet.

Q. What is your business? I don't know as I asked you that before.

A. Well, I have ranched and I have been in the cattle business awhile—cattle business partly and mining principally, but
105 since 1872 I have mined, more or less, all the time; since 1875 I have been mining all the time.

Q. You have been mining all the time since 1875?

A. Yes, sir.

Q. Now, are you acquainted with the value of labor of the character required to run this drift, at the time it was run in 1880?

A. Well, now knowing the nature of the ground, the best contracts that have been given was seven dollars and a half a foot, in hard, shooting ground, and barring that, I could get all the work I wanted done in the camp for four dollars—that is, barring the shooting.

Q. Was this shooting ground?

A. No, sir.

Q. What do call it?

A. Picking and shoveling—picking ground.

Q. And the value of such labor as that was how much a foot?

A. We got work done for four, and I have got work done for two

and a half, barring the shooting, but there has been four dollars a foot paid for it, barring the shooting.

Q. Was there any shooting to be done in this drift?

A. No, sir.

Q. What implements were necessary to be used in the running of the drift?

A. A pick and a shovel and a bucket and a rope to windlass it up.

Q. Are you acquainted with a claim known as the Monticello?

A. Yes, sir.

Q. Where was that situated?

A. It is situated in the Monarch mining district, on Monarch Mountain, Chaffee county.

Q. Were you one of the locators of that claim?

A. Yes, sir.

Q. State to the jury what you did in the way of locating the claim, and where, and all about it?

106 A. In the first place, in the latter part of July we had done about six or seven feet of work on a shaft, about six or seven feet, about five or six or four feet, from six to eight feet from the original discovery of what is called the Paymaster—that is, northeast.

COURT: What year was this?

A. In 1881.

Q. What month in 1881?

A. It was in July; they began in the latter part of July—about the 27th or 28th.

Q. Look at that map and explain to the jury, if you please, the relative positions of the Paymaster and the Monticello claims.

Objected to by plaintiffs' counsel.

WITNESS: I wasn't through with the description of the work; we left there and went beyond, southwesterly, beyond the discovery hole, right aside of this discovery shaft which had been sunk forty-five feet to the southeast, and within three or four or five feet of it, and sunk a hole there eleven feet, or about that—maybe twelve feet—at the lowest rim; that constituted the discovery hole of the Monticello.

Q. That was begun in July and finished some time in August, wasn't it?

A. Yes, sir; some time in August.

Q. You may state what you did there in the way of a discovery, the character of the material, if any, that you found in the hole, and how it laid, as to whether or not it was in place.

Objected to by plaintiffs' counsel because the proposed proof does not at all conform to the pleadings; which objection the court overruled.

WITNESS: In the discovery hole that I spoke of being be-
107 tween —; this discovery is over ten feet—between ten and twelve feet; we got out carbonates of iron and lead and some galena ore, which we had tested, and it runs in silver.

Q. Now, you haven't finished your description of the shaft, I believe. I will ask you whether or not the mineral was in place there?

A. I believe I answered that it was in place; yes, sir.

Q. Well, did you examine sufficiently to testify to the jury as to whether or not that plat represents the relative situation of the two claims to each other?

A. Well, on this map I did find stakes. In November I found the stakes there over the Paymaster lines, as I don't say all the stakes were there the latter part of November; I stated that, and if I didn't I make that statement now.

Q. Now, what was done afterwards? I will ask you whether or not there were any corner posts and side posts set up on the Monticello claim?

A. Yes, sir.

Q. What were they, the number of them, and what kind, and how marked?

A. There were seven stakes; there was one discovery stake, there was four corner stakes, and two side-line centers in the center of the side lines, and the numbers and the description of the claim was on it, facing towards the discovery of the Monticello.

Q. What was on the discovery stake?

A. The discovery stake had a description of the claim; it was located on the 27th day or 28th, one, and gave a description of the claim, claiming it to the northeast something like 1,200 feet; it might be a little over; I am not positive, though; I haven't looked at it; certainly I was — look at the time, and it ran some-
108 thing like 300 feet southwest and 150 feet on each side of the vein.

Q. Did you assist in putting up those posts?

A. Yes, sir.

Q. And the names that were on the stake, what were they?

A. The names were Jacob Welch—I forget his other initial—and W. M. Quimby, and J. S. Boon on the stake that we put up first.

Q. J. S. Boon—that is yourself?

A. Yes, sir.

Q. What, if any, work was done on that Monticello claim afterwards?

A. There was in this drift that was drove ten feet; we drove between nine and ten feet—between nine and twelve feet; I ain't certain whether I seen that measured or not, but I would guess at it being twenty feet, for all the work that was done on it altogether; then I went to the outside forty or fifty feet; the vein dipped with the hill and went below and started to sink again. Mr. Monogue was doing the work, and I think he got down ten or twelve feet; something like that.

Q. At the time he went to work in the drift you speak of did you measure what work had been done previously?

A. Yes, sir.

Q. And that was, you say, ten feet?

A. Yes, sir.

Q. Now, you progressed in that drift ten to twelve feet?
A. Yes, sir.
Q. Who worked there?
A. Benjamin F. Smith was one of the parties, and I wouldn't be certain who the other was. Mr. Monogue had charge of the work at the time. I couldn't say who was in there outside of Mr. Smith; he was there one day working when I was there; I am certain of that.

109 Q. What was the character of the ground you went through on the extension?
A. Picking ground.
Q. The same character of ground?
A. Yes, sir.
Q. I will ask you, Mr. Boon, whether you know as to the citizenship of yourself and Mr. Quimby and Mr. Welch; are they citizens of the United States or not?
A. Well, I am a citizen of the United States, and Mr. Quimby and Mr. Welch are also, or have been represented by men who know that they are; that is all I can tell for them.

Cross-examination by Mr. PATTERSON:

Q. Mr. Boon, you are one of the defendants?
A. Yes, sir.
Q. It was about the first of September, I believe, Mr. Boon, that you went upon the ground known as the Paymaster lode and there found a hole three or four feet in depth?
A. Yes, sir.
Q. Did you see any mineral there?
A. Yes, sir.
Q. Disclosed a lode, did it?
A. No; not at that time; it disclosed mineral and went through the mineral.
Q. It disclosed at that time float, or that which gave you to believe that there was a lode there?
A. Yes, sir.
Q. When was three or four foot hole sunk?
A. It was sunk about the first of September; I wouldn't say exactly.
Q. Was there any other hole on that claim besides that, on the first of September, 1878?
A. Well, if you want me to answer the question, I will say, Yes, sir; the Ben. Bolt lode was there.
Q. Answer my question, sir, whether there was any other hole there on the first of September; say yes or no.

110 A. There was not on what is called the Paymaster now.
Q. Not within the limits of the Paymaster?
A. No, sir.
Q. When you were talking about the Ben. Bolt it was some claim that was not within the limits of the Paymaster whatever, or at least any hole that was sunk down within the limits of the Paymaster?

A. Yes, sir; it was.

Q. Well, then, straighten this out. I asked you if there was any other hole on the Paymaster claim upon the first of September, except this three or four foot hole, and you said, No, sir; there was not.

A. It was the limits of the Ben. Bolt, and the Paymaster could have overlapped and took the Ben. Bolt discovery hole in.

Q. The question I asked you was, whether within the limits of the Paymaster lode, upon the first of September, 1878, there was any other hole than the one you have spoken of; now, you can answer that yes or no.

A. I will ask you the question.

Q. Do you understand my question?

A. I don't think I do.

Q. Now, let me ask you so you can.

A. I don't believe I understand you. I will ask you what the limit is first.

Q. Within the boundary lines of the Paymaster claim, upon the first of September, 1878?

A. No, sir; there was not.

Q. Who did you find there when you went there on the first of September, 1878?

A. William Shephard.

Q. What was William Shephard doing?

A. He was just standing there when I was there at the time.

Q. Was he standing there doing anything, or were his thumbs in his vest, or his arms folded, or what?

111 A. I don't think he was working at the time; if I ain't mistaken he was eating a lunch or was finishing one, or he might have been working; I am not positive either.

Q. Working where or at what?

A. He was working at this hole if he was working at all.

Q. When you went there on the first of September, 1878, you found William Shephard working in that hole, or was evidently on that claim working it?

A. ——.

Q. You staid there about fifteen minutes?

A. I wouldn't say how long; I was there a short time.

Q. When did you go back again?

A. I was on the hill, off and on, several times. I wouldn't say how many times.

Q. How soon after the first of September were you back there?

A. It might have been two or three days. It might have been the fourth or fifth or second of September when I was there first.

Q. Who did you see then?

A. I don't think I saw him there afterwards?

Q. Are you certain you did not?

A. I wouldn't be positive now about that.

Q. You say you were there again in December?

A. The last of November or first of December; yes, sir.

Q. You say some more work had been done upon it?

A. Yes, sir; there had been.

Q. Then, you think it was only about seven feet from the surface?

A. Yes, sir.

Q. You judge that because in standing at the bottom you could reach to the top?

A. Yes, sir.

112 Q. Was that in the shape of a shaft or an adit?

A. The first that was put down he run in about five or six or seven feet in that direction and run in the direction of the slope of the hill, which made an adit of four and a half feet, and then he commenced sinking and went down about three feet. I am satisfied it was not three feet, or hardly that; it might have been, but I don't think it was.

Q. Didn't you leave the camp about that time?

A. What time?

Q. About the first of December, 1878?

A. No, sir.

Q. When did you leave the camp?

A. I didn't leave it at all. I was in camp off and on all winter.

Q. When did you go to Chalk Creek?

A. I think that was about 1872 when I was in Chalk Creek most of the time.

Q. Didn't you go to Chalk Creek in the winter of 1878–1879?

A. Not to do any work; no, sir.

Q. Not to do any work?

A. No, sir.

Q. Well, did you go there?

A. Well, I went to several places. I went to Pueblo and I went, if I ain't mistaken, to Leadville.

Q. I asked you about Chalk Creek?

A. Yes, sir; I believe I went to Chalk Creek for a day or two.

Q. Now, I think it was in 1879 that work was commenced upon another shaft on the Paymaster lode?

A. I didn't understand your question.

Q. I understood you to say that in May, 1879, work was commenced on another shaft on the Paymaster lode?

A. May or June, I wouldn't be positive which.

Q. How far was that from the discovery?

A. Four or five or six feet. I wouldn't say exactly.

113 Q. Was it not, in fact, a part of it—didn't the two run together?

A. No, sir; not together; they cut out the part between afterwards.

Q. Now, let me ask you if this wasn't about the way it was, Mr. Boon: Say these blue marks here, let them be the surface—would represent the adit, and then at the end of the adit they had sunk a shaft—at least they sunk some three or four feet at the lower part of it onto the new shaft that was sunk. Was it next, right at the side of the old opening, and didn't it take in a part, and didn't they fill up that?

A. No, sir; it didn't take that in; this was the work done in

1879—the work done in 1878; they sunk down and made it deeper than it was cut out in 1879, and it shows there for itself that it cut off to the left, and here is where we sunk that, and it was cut in there, and I think from the edge of this to the edge of that would be about four feet.

Q. You say no ground was ever broken between the two?

A. It was, in 1879.

Q. The ground between the two was broken in 1879?

A. Yes, sir.

Q. So that originally you could go from this working right directly into that shaft, could you not?

A. In what year?

Q. I don't care what year.

A. You can now.

Q. So that is or has been practically all one working that had been done at different times?

A. No, sir.

Q. You say you can start in there and go into that?

A. You can't now.

Q. You could in 1879?

A. No, sir; they built it up, and it run on the floor around here; they started a cut in there.

Q. It has all been cut and the earth moved, more or less, between those two?

114

A. Not within the depth of ten feet.

Q. I have not asked you how deep.

A. Of course it is cut there.

Q. Now, you say in 1879 they sunk this shaft about forty feet?

A. I think about forty-five.

Q. Who sunk the shaft, sir?

A. I think Mr. Thomas Penrose and Mr. Thomas White.

Q. They were the owners of the Paymaster?

A. No, sir.

Q. They were the contractors?

A. Yes, sir.

Q. I mean the men who had the work done were the owners of the Paymaster lode.

A. I presume so.

Q. They were not the owners of the Monticello lode—that is, the Monticello wasn't in existence at that time?

A. In 1879?

Q. Yes, sir; when this forty-foot shaft was sunk?

A. No, sir.

Q. So in 1879 the owners of the Paymaster had that shaft sunk to the depth of about forty feet. It went down on a vein, didn't it, a good part of the distance?

A. Well, I don't know what you would call it; it was not the mineral.

Q. You found a vein at ten or eleven feet, didn't you?

A. Yes, sir; we did.

Q. Wasn't this driven on the same vein or the same crevice—the

vein that this shaft was sunk on—wasn't it the same vein you discovered in your discovery shaft?

A. The same vein this shaft was sunk on?

Q. Yes, sir.

A. The same vein; the part of it which was sunk on it; they left the vein.

Q. If this was on a part of the same vein why wasn't this the same vein?

A. This work wasn't all done on the vein.

115 Q. I haven't asked you that; I asked you whether this shaft wasn't sunk on the same vein, or a part of it?

A. A part of it; yes, sir.

Q. Now, you say that in 1880 there was some work done on that claim—on the Paymaster, we are talking about?

A. No, sir; on the Monticello there was.

Q. You said it was in July, 1881, that you sunk the discovery shaft on the Monticello.

A. Did you ask me if it was in 1880 they done work on the Paymaster?

Q. Yes, sir,

A. Yes, sir; I made a mistake.

Q. In 1880 you say there was some other work done on the Paymaster?

A. No other in 1880, except one time.

Q. Was there any work done in 1880?

A. I said yes, sir; there was.

Q. What work was it?

A. Ten feet of a drift on the vein.

Q. Where did this drift commence?

A. It went down in a shaft, as far as I have discovered, about eighteen or twenty feet and followed the vein; the mineral dipped with the hill, and they went ten feet in that on the vein.

Q. I understand now, in sinking this forty-foot shaft they went down on the vein a part of the way, then the vein left the shaft, and they continued sinking the shaft to the depth of forty feet?

A. Yes, sir.

Q. That was the condition of it in 1879; in 1880, instead of continuing the sinking of this forty-foot shaft, they go into the shaft to where the vein left the shaft and then commenced the drifting on it?

A. Yes, sir.

Q. Who did that work, sir?

A. Well, I didn't see the parties doing that work.

116 Q. You didn't do it?

A. No, sir; I did not.

Q. Nor none of your codefendants?

A. No, sir.

Q. The Monticello lode wasn't in existence then?

A. No, sir; not at that time.

Q. How did you come to go to examine it in 1881?

A. In 1881?

Q. Yes, sir.

A. Because the work hadn't been done—the assessment.

Q. How did you know it had not been done?

A. Because parties told me that had done the work.

Q. Parties that had done work on the Paymaster claim in 1880 went and told you that the work had not been done?

A. Yes, sir.

Q. That is what you mean, is it; they told you that the work that had been done wasn't worth a hundred dollars; wasn't that it—wasn't that what they told you, sir?

Q. Well, I will have to tell what other people told me, then, I reckon.

Q. Answer my question; wasn't that what they told you, that the work that had been done in 1880 wasn't worth a hundred dollars?

A. Tom White said they hadn't done the work on it—that is, the full assessment.

Q. Now, then, will you please answer my question; what they told you in substance was that the work that was done on the claim in 1880 wasn't worth a hundred dollars; was that in substance what they told you?

A. That is the substance; it would amount to that.

Q. You understood that the work they had been doing was intended for the assessment, didn't you?

A. I don't know as there was anything said about it.

Q. Didn't you know, sir, that the work they were talking to
117 you about—you knew they were talking to you about the attempt to do the assessment work—when they were telling that the full assessment had not been done?

A. No; I don't think it was. All I can say was what I thought. I think probably they tried to do the assessment.

Q. You thought they were trying to do the assessment, didn't you?

A. No; I think they were just trying to do some work.

Q. Now, why do you equivocate this way? First you say you thought they were trying to do it, and now you say you didn't; now, what do you mean? Didn't you, in talking with Tom White, when he told you the full assessment work had not been done, understand and believe that the work that he was referring to was intended as the assessment work?

A. Why, I presume——

Q. Didn't you understand at that time that he was talking about an attempt at doing the assessment work?

A. I presume he did; I don't remember what I was thinking of at the time, but I presume he probably did.

Q. What else could you think when he said to you they hadn't done the full assessment work?

A. As a natural consequence, I would presume so. I couldn't tell exactly what I was thinking.

Q. When did Tom White tell you this?

A. I couldn't say; at the time he came down from Silver creek,

and I met him and he was talking to me; it might have been in January or February.

Q. 1881?

A. Yes, sir.

Q. Did Tom White tell you what he had been doing; that
118 he had been one of the men that had been doing the assessment work there?

A. I don't think he told me; I knew he was working there for the company.

Q. And you concluded, if the work wasn't worth a hundred dollars, if it was intended for the assessment work, you would take possession of the lode,; is that what you concluded about it?

A. Yes, sir; that is the reason I took possession of the lode.

Q. Then, you took the lode and took your chances upon proving that the work that was done as the assessment work wasn't worth a hundred dollars; that is how you came to have a claim in the Monticello lode, going there under the circumstances, is it not?

A. Yes, sir; that is the reason I went there.

Q. Who did you take with you to take this claim?

A. This Mr. Welch and Mr. Quimby.

Q. Where is Mr. Welch?

A. I don't know.

Q. Do you know that he is in the penitentiary?

A. I don't know, I am sure.

Q. You have heard he was there.

Objected to. Objection sustained.

Q. Who did you say the other man was?

A. Mr. Quimby.

Q. Where is Mr. Quimby?

A. I believe he is in Boston now.

Q. Was he mining up there at that time?

A. Yes, sir.

Q. Why did you get two others to go with you?

A. I couldn't tell you that reason or any reason about it.

Q. Were they your partners in any other claim?

A. No, sir; neither one were partners.

Q. Who first conceived the notion of your going and taking this claim?

119 A. Well, I believe I was the one myself.

Q. You concluded it might be dangerous, and you got a couple of others to go with you?

A. No, sir; not at all.

Q. Quimby was a man of some means, wasn't he?

A. I couldn't say whether he is or not.

Q. Wasn't it because you knew or feared there would be litigation about it; that the owners of the Paymaster would claim the claim, and you wanted somebody to put up for you in court; wasn't that the reason?

A. No, sir; do you want to know the reason?

Q. Yes, sir.

A. I seen this company had mines there and wouldn't work them. They had bought about eight or nine or ten claims in the camp with the best showings and wouldn't develop them and open them up.

Q. Because this company had bought about nine or ten claims in the camp and they wouldn't develop them, and therefore when you found a claim that had been abandoned you had somebody to go in with you to divide with you. Will you tell the jury what the purchase of nine or ten claims by this company in the camp had to do with you and Quimby jumping these claims?

A. I don't know, sir.

Q. What reason can you give?

A. That is the reason I gave; I didn't get them to go in with me; they came and put our names on the stake and went to work.

Q. You first conceived the notion of taking this claim?

A. Not myself; the claim was open to location; I conceived it and spoke about it in the camp amongst others.

Q. You conceived this claim was open to location when
120 Tom White told you the assessment work wasn't fully done?

A. Yes, sir.

Q. Then why did you go and get somebody else even to put your name on the stake?

A. I didn't get any one else; we were talking about it there. I was going to a claim me and Mr. Smith had on the hill.

Q. Did this thing dawn upon the minds of all the men in the camp at the same time?

Objected to. Objection sustained.

Q. You say that the best figures for which contracts were let in 1878 in that camp was seven dollars and a half a foot?

A. I wouldn't say that is the best figures in the camp.

Q. That is the language you used, sir; that the best figures were seven and a half dollars, and you got work done as low as four dollars.

A. In the same character of ground in that locality.

Q. Now, let me understand you; you say that the best figures for work done in the same ground as this work was done in was seven dollars and a half a foot?

A. No, sir; not the same ground in the same locality, going into the bed rock—the rock that was gone down in there was paid for at seven dollars and a half a foot; after they left the vein, in that vein matter you can get it done from two and a half to four dollars a foot, and in shooting ground—that was not known as shooting ground.

Q. Where is the Republic lode?

A. The Great Republic?

Q. I mean your property.

121 A. About three-quarters of a mile down the hill.

Q. You had some work done on it in 1878?

A. Yes, sir.

Q. For which you paid one hundred dollars for twelve feet?

A. Yes, sir.

Q. And the men lost on the work?

A. I understood since they made thirty-five dollars on the work.

Q. I mean in 1878. You say you got a hundred dollars' worth of work done, and I understand you paid a hundred dollars for doing a certain amount of work and you understood they made thirty-five dollars on it?

A. Yes, sir.

Q. Therefore you only got sixty-five dollars' worth of work done?

A. It seems so to me, and it is hard shooting ground, too.

Q. You measured this ground very carefully, didn't you—this work that was done in 1880?

A. In the Paymaster; yes, sir; I went into this with a tape line.

Q. Who did you say was with you?

A. I think Col. Quimby and Mr. Monogue and Mr. Welch, I think, was present, and probably two or three others; I wouldn't be positive who was there.

Q. How did you come to have so many up there?

A. They was working.

Q. Working where?

A. They was working in the ten-foot hole or the twelve-foot hole, whichever it was—the discovery hole of the Monticello.

Q. Did you go to work on this claim before you measured this work that was done?

A. Yes, sir; I did; I guessed at it; I went down in the hole and looked at it.

Q. How long were you on this claim, sir, before you went in to measure that work, besides guessing?

122 A. It might have been three or four or five days; I wouldn't be certain.

Q. How did you get into the drift?

A. I went down into the shaft as far as it went and then went off into the drift.

Q. When you got there wasn't the top of the shaft closed in?

A. It had some sticks lying on it and a part of them had been thrown off.

Q. Wasn't it closed over to protect it from the winter?

A. It had been and there had been five or six feet of snow on one side, probably that wide.

Q. It was probably left covered up, in going away for the winter, to protect it from the snow?

A. They throwed some sticks over it, and the snow was that wide (about two feet) on it in the spring.

Q. Didn't you with others jump seven or eight of these same defendants' claims at that same time, or the same plaintiffs' claims at the same time?

A. Not seven or eight; no, sir.

Q. Well, how many?

A. Well, there was—we located on the Monticello and the Lookout, or what was called the Ben. Bolt and the Paymaster.

Q. What do you know about the jumping of the Great Monarch?

Objected to by defendants' counsel, which objection the court sustained, and to which ruling of the court the plaintiffs, by their counsel, then and there duly excepted upon the ground that they have a right to show this, for the purpose of showing the interest of the witness with reference to his credibility before the jury.

Q. How is the work usually performed, or how was it usu-
123 ally performed in 1878—by contract?

A. In 1878?

Q. I mean in 1880?

A. There was some of it done by contracting and some was hired out.

Q. Wasn't that the common and ordinary way in which work was done by the owners of several mines—where a man would own a number of mines—when he had sinking and drifting and other work done upon it in the nature of development work, by contract?

A. In 1880?

Q. Yes, sir.

A. Not all the work was done in that way.

Q. Wasn't the general work done that way?

A. In some cases there was contracting.

Q. Wasn't it quite common?

A. No, sir; it was not. There was more assessment done by days' work. There was contracting done, to be sure.

Q. Did you notice, Mr. Boon, what the size of the crevice was where the vein left that forty-foot shaft?

A. Yes, sir; but I didn't measure it.

Q. Give us your best recollection of the size of the crevice—the size of the vein?

A. I think it was three feet and a half. I don't think it was hardly four feet.

Q. Where it left the shaft?

A. Yes, sir.

Q. Do you say that crevice would be filled with gangue, and here at the point where it left the shaft was three feet and a half wide?

A. By guessing at it, I would say so.

Q. And that is as near as you can guess?

A. Yes, sir.

Q. Don't you know it presented a face of almost solid limestone, where they started in to do the work?

124 A. It was not above and below—the drift on the upper side and the lower side—it didn't show. Above there was gangue left and below there was gangue left, so it was soft above and below. It was six and a half feet high and three and a half feet wide.

Q. They started in with that shaft to make a face on it about six and a half feet high?

A. Yes, sir; about six feet.

Q. Did you say the full six feet was in gangue?

A. Part of it was in gangue.

Q. I want to know how much of that was in gangue or soft matter other than limestone?

A. The gangue sometimes pinches mineral out. I don't know how much mineral was there or how much gangue was taken out, but in the top and bottom both there was some gangue.

Q. You say, in your opinion as a miner, where they started in that drift, the full height or face of the cut, they didn't start in in almost solid limestone, and it was after they got in some distance the crevice opened up presenting a quantity of crevice or vein matter?

A. If it was lime it was shattered, because the walls showed it.

Q. Do you know whether it was a lime face they started in or not?

A. No; I couldn't say, because they cut into the timbers to get through.

Q. You are going upon the theory that this work was all through soft picking ground?

A. Yes, sir.

Q. That is your theory of this matter?

A. Yes, sir.

Q. Was it the assessment work that you had done on the
125 Great Republic, for which you paid a hundred dollars, out of which the parties made thirty-five dollars on it?

A. No, sir; it was not all done on that.

Q. It was something more?

A. I done other work on it, and I worked afterwards.

Redirect examination by Mr. SHARMAN:

Q. Explain to the jury what you mean by gangue?

A. Gangue is either, as a mining term, *is* a spar or decomposed lime or any rock. The talc would be gangue of a vein; if the country rock dropped in with it it would be gangue.

Q. Is that soft or hard?

A. That is soft.

COURT: There may be some that don't know the location of this gangue with reference to the vein or body of ore. Explain that?

A. We drove on that as far as that showed.

COURT: Explain the general term.

A. Gangue will lay. The iron and mineral will sometimes crack the walls so as to drop in and be on one side or the other, and sometimes it would be in the center of it. Spar or quartz, they may be considered gaugue; it is stained sometimes on one side and sometimes all through. I have seen gangue all filled with rock.

COURT: Is it always vein matter?

A. It is not always vein matter; sometimes there is spar in the vein.

JURYMAN: I didn't understand what was the depth of this shaft—forty or forty-five feet?

A. It was forty-five.

BENJAMIN F. SMITH, called and sworn on the part of the
126 defendants, testified as follows:

Direct-examination by Mr. SHARMAN:

Q. Your name in full is B. F. Smith, is it?
A. Yes, sir.
Q. What is your business, Mr. Smith?
A. Mining.
Q. How long have you been a miner?
A. Since 1860, more or less.
Q. Whereabout?
A. I started in at California.
Q. Are you familiar with the mining in the Monarch mining district?
A. I am.
Q. Have you ever done any work there?
A. Yes, sir; I have.
Q. Are you acquainted with the claim called the Paymaster?
A. Yes, sir.
Q. State when you became acquainted with it and what you did, if anything, on that claim, and who employed you.
A. I was hired to go to work there in the summer of 1880—I think it was the last of September or the first of October—for Mr. White, to do assessment work with another man named Cordear.
Q. With another man named Cordear?
A. Yes, sir.
Q. You were employed by Mr. White; then what did you do?
A. We went down in the shaft and put in a false bottom, twelve or fifteen feet, and started on the shaft.
Q. Do you know what the depth of that shaft was in 1880, when you went to work there—I mean the depth of the shaft which you covered, out of which you drifted?
A. I think it was about forty-five feet.
Q. Now, then, Mr. Smith, just state to the jury exactly what you did in running that drift, how long it took you, and all
127 about it.
A. We commenced Monday morning and worked until Saturday night.
Q. You and Cordear?
A. Yes, sir.
Q. Was that all the work that you did?
A. Yes, sir.
Q. Was that all the work that was done in that shaft during the year of 1880?
A. I think it was.
Q. It was?
A. Yes, sir.
Q. Describe the character of the ground in the drift.
A. It was mineral, a crevice of galena and iron and decomposed rock.
Q. Describe it to the jury so they can understand it.

A. I think the crevice was three and a half feet wide and filled with decomposed rock and iron and galena.

Q. State whether or not it was shooting or picking ground.

A. It was all picking.

Q. Are you acquainted with the value of doing such work at the time you mentioned, in 1880?

A. Yes, sir.

Q. What, in your opinion, was the reasonable value of the work done in running that drift?

A. I think it was about thirty-five dollars.

Q. You say it took you from Monday morning until Saturday night?

A. Yes, sir; we worked at it six days a piece.

Q. Then, upon leaving, did you cover up the shaft?

A. Not at that time; no, sir; I helped cover the shaft.

Q. How was it covered?

A. It was covered with poles.

Q. How long did that take you?

A. Probably ten minutes.

Q. Ten minutes?

A. Yes, sir.

Q. Poles off the claim?

128 A. Poles that were used to cover up the shaft the year before.

Q. They were on the claim at the time?

A. Yes, sir.

Q. That took you about ten minutes?

A. Yes, sir.

Q. What did you receive as compensation for doing this work, Mr. Smith?

A. Three dollars and a half a day.

Q. What was the usual price paid to miners in that locality for doing such work per foot?

A. I don't know; there wasn't any let by the foot in that vicinity as I know of.

Q. None let by the foot?

A. Not in that neighborhood, right close there.

Q. And you got three dollars and a half a day?

A. Yes, sir.

Q. What did Cordear get?

A. I don't know what he did get.

Q. Were you around in that vicinity after this work was done?

A. I was.

Q. Did you go to work in that vicinity again?

A. Yes, sir.

Q. When and under whose employ?

A. In 1880?

Q. At any time, if you did any work in 1880.

A. I helped do some more assessments in 1880.

Q. I am asking about the Paymaster?

A. The next time I saw it was in the summer of 1881. I think about the middle of August.

Q. You were doing some other work in the vicinity of Chaffee during 1880, were you?

A. Yes, sir.

Q. On other claims?

A. Yes, sir.

Q. Well, what work did you do in 1881?

A. I went to work on what is called the Monticello.

Q. Who employed you?

A. Mr. Monogue.

129 Q. Did you examine this drift before going to work in 1881?

A. I did.

Q. Did you measure it; if so, with whom?

A. With Mr. Monogue.

Q. Now, state what the dimensions of that drift were in 1881, when you went to work on the Monticello claim.

A. It was about four and a half feet on the bottom and about three and a half feet on top, and about six feet high, timbered up.

Q. And how long?

A. Ten feet.

Q. That is what it measured when you run it in there before going to work on the Monticello?

A. Yes, sir.

Q. What did you measure it with?

A. We measured it with a four-foot measure.

Q. Was it in the same condition as it was when you left it after doing the work in 1880?

A. Yes, sir.

Q. Did you say that Mr. Monogue was with you when you measured it?

A. Yes, sir.

Cross-examination by Mr. PATTERSON:

Q. Mr. Smith, you have a claim right adjoining the Paymaster, haven't you?

A. Yes, sir; I have.

Q. Lower down the hill?

A. Yes, sir.

Q. This lode that the Paymaster is on runs with the slope of the hill, on the outside, does it not?

A. I think it does.

Q. Isn't your claim on the same lode, in your judgment?

A. I don't know.

Q. Isn't that the general belief?

A. It wouldn't unless the croppings run across the ground; if the apex of the lode run across my claim it would be on my ground, but I don't think it does.

130 Q. I am asking you; you ain't located on the apex of the vein, are you?

A. No, sir.

Q. You sunk from the surface and got what is believed to be in the neighborhood of this identical claim, then, on the dip of what they call the Paymaster?

A. No, sir.

Q. You are right below it—your claim shows the Paymaster below, does it not—below, on the side of the hill?

A. No, I don't think it does.

Q. What do you think about it?

A. There is a fraction in there.

Q. How much of a fraction?

A. I think it is over a hundred feet.

Q. Located by anybody?

A. Yes, sir; there are parties there.

Q. Say that this represents the side of the hill on which these claims are located in that direction—the pencil is the vein; it is running with that slope of the hill; isn't that so?

A. Yes, sir.

Q. And you can go on the side of that hill and get that vein anywhere from the surface of the hill?

A. That is the supposition.

Q. And isn't the supposition that that claim will catch this same vein?

A. I haven't caught anything.

Q. If you catch anything, you expect to catch this same vein?

A. If I go deep enough.

Q. Ain't you interested, Mr. Smith, in having this Paymaster recognized as a latter location than your own?

A. No, sir; I don't know that I am.

131 Q. Upon the ground that the first location, if you have the apex of that vein, will take all the mineral through your claim and everybody else's?

A. No, sir.

Q. Have you talked that matter over?

A. No, sir; I have not.

Q. Is that the only vein you expect to strike; do you have any idea of cutting any other vein on this claim except this one?

A. There are believed to be stratas.

Q. You don't know of any other?

A. No, sir.

Q. The one you located it for was the Paymaster?

A. We located it just for the ground.

Q. When did you commence working there, Mr. Smith?

A. What year do you mean?

Q. In 1880.

A. I think it was the last of September or first of October.

Q. What day of the week?

A. Monday morning.

Q. What time in the morning?

A. We calculated to start from town at seven o'clock.

Q. What time did you quit?

A. About five o'clock, I should judge.
Q. What time—when did you stop doing any work on that at all—Saturday night?
A. Yes, sir.
Q. Then you worked six days?
A. Well, we went back there afterwards, about a week after, and covered it up.
Q. In doing the work you worked six days?
A. Yes, sir.
Q. You got three and a half dollars?
A. Yes, sir.
Q. Did the gentleman that was working with you get that much or more?
132 A. According to my knowledge, I don't know much he got.
Q. I don't understand your arithmetic; if you worked there six days and got seven dollars a day, how forty-five dollars was worth thirty-five dollars, if you were paid forty-five dollars for doing it?
A. Yes, sir; that is what I say.
Q. Then you got more wages than you earned; is that your idea?
A. I don't know as it is; we could have done more work.
Q. You could have done more work?
A. Yes, sir.
Q. Then you loafed along?
A. Yes, sir.
Q. Yet you knew you were doing assessment work?
A. Yes, sir.
Q. Who employed you?
A. Mr. White.
Q. Mr. White had the contracts for the owners, didn't you understand it?
A. I don't know whether he had or not.
Q. Didn't you understand that he had a contract from the owners to do the assessment work?
A. He told me he had a contract to do it on five claims.
Q. And you understood you gentlemen were doing it on this claim?
A. Yes, sir.
Q. Hadn't Cordear been upon the claim before that Monday morning?
A. Yes, sir.
Q. Getting ready to go to work?
A. He carried some tools up, I believe.
Q. Didn't White go with him?
A. Yes, sir.
Q. Who attended to sharpening the tools?
A. Mr. White.
Q. He furnished everything?
A. I don't know; he brought the tools up.
133 Q. Wasn't Mr. White in attendance upon you gentlemen, attending to the sharpening of the tools, going up and down from the claim?

A. No, sir; he was never at the claim only once when we worked there.

Q. How often were your tools sharpened?

A. I think they were sharpened about twice through the week.

Q. The supervision of the work was under Mr. White?

A. Yes, sir.

Q. He was the contractor?

A. I don't know what he was; he was the one that hired me.

Q. Didn't you understand Cordear was getting four dollars a day?

A. I never heard of it until I heard his evidence.

Q. He was, was he?

A. Yes, sir; that is what he swore to, but I didn't know it at the time.

Q. That was the very cheapest that work could be gotten for up there, is it not?

A. Three dollars and a half a day?

Q. Yes, sir.

A. No, sir; there was work done for less than that; there was men that worked for less.

Q. Do you know why he didn't get it done for less than that?

A. No, sir.

Q. Did you tell Quimby and Welch that the assessment work had not been done and advise them to take possession of it?

A. I don't know as I did.

Q. Do you know you did not?

A. I didn't tell them.

Q. Didn't you talk about it not being done at all?

A. I have talked about it; yes, sir; that I didn't think there was a hundred dollars' worth of work.

Q. Did you talk about it before it was jumped?

A. Yes, sir.

134 Q. Did you talk about it to Quimby and Welch?

A. I don't think I did.

Q. Did you talk about it for the purpose of having somebody take the claim?

A. No, sir.

Q. What made you talk about it, then?

A. It came up as to whether that would do as a hundred dollars' worth of work.

Redirect examination by Mr. SHARMAN:

Q. How often did you see White up there?

A. He was up there once.

Q. Once during the time you were at work; who sharpened the tools twice?

A. I think Mr. White done it.

Q. Were they sharpened when they were brought up there?

A. Yes, sir; Monday morning or Sunday.

Q. I omitted to ask you what work, if any, you did on the Monticello discovery shaft?

A. I didn't do any.
Q. You never did any work there?
A. No, sir; not in the Monticello shaft.
Q. What is the expense of sharpening those tools?
A. I think it is twenty cents a pick.
Q. How many picks did you have?
A. We had—I think there were sharpened three times—one pick.
Q. And one shovel?
A. Yes, sir.

CHARLES MONOGE, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. SHARMAN:

Q. Mr. Monoge, what is your business?
A. Miner.
135 Q. How long have you been mining?
A. Off and on since 1854.
Q. Have you done any mining in the Monarch district?
A. Yes, sir.
Q. Since when?
A. Since 1879.
Q. Continuously?
A. No, sir; not continuous.
Q. Did you have anything to do with sinking the discovery shaft on the Monticello claim?
A. Yes, sir; I was hired there.
Q. State what you did.
A. The main work they did was to sink a shaft about eight feet deep northeast from the old works—from the deep shaft; we abandoned that and commenced near about southeast from the Paymaster shaft, I should think about three feet and a half or four feet, and sunk it to the depth of eleven feet.
Q. You say about three feet from the Paymaster shaft?
A. Three and a half to four feet from the Paymaster shaft, southeast.
Q. You sunk that how deep?
A. Eleven feet, or a little over.
Q. What were the dimensions of the shaft?
A. It was about four feet by seven or eight square.
Q. State what, if any, mineral was discovered in the shaft.
A. There was a vein of mineral discovered about four feet from the surface and extended to the bottom, running at an angle, dipping a little.
Q. You made the discovery at four feet?
A. About four feet, I should judge; I didn't measure it.
Q. And then you went down on that vein to eleven feet?
A. Yes, sir.
Q. Was that at the lowest rim?
136 A. Yes, sir; at the lowest rim when we measured it; it was a little over eleven feet at the time it was sunk.

Q. State whether or not that was in place.
A. I should judge so.
Q. Were you in the drift spoken of in the Paymaster shaft at any time?
A. Yes, sir; several times.
Q. When were you there first and with whom?
A. I think I was there about the first or second of August.
Q. What year?
A. 1881.
Q. Did you go into the drift?
A. Yes, sir; I went into the drift.
Q. State whether you measured it or not.
A. I did.
Q. What was the dimensions?
A. It was six feet high, about three and a half to four feet at the bottom, and about two and a half on top, in the clear.
Q. What was the length?
A. Ten feet.
Q. Who was with you when you measured it?
A. B. F. Smith.
Q. That was some time about the first of August?
A. Yes, sir.
Q. What was the character of the ground through which that drift was run?
A. It was loose dirt and mineral mixed and some lime.
Q. State whether it was picking ground or what is called shooting ground.
A. I should call it picking ground.
Q. Do you know whether it was or not?
A. Yes, sir; I don't think it was necessary to use anything else than a pick.
Q. Were you familiar with the value of such work at that time in that district?
A. Yes, sir; somewhat.
Q. What, in your opinion, was it worth to run that drift?
A. I don't think it could exceed thirty-five dollars with
137 reasonableness.
Q. What was the value or current price paid to miners per day at that time when that drift was run?
A. I think the wages run from two and a half to three and a half. The common wages were considered three dollars then.
Q. That was the ordinary price?
A. Yes, sir; that was the ordinary price, I believe.
Q. What was the value per foot, if it had any fixed value, to do that work—what would it have been reasonably worth, considering the character of the ground?
A. I think from three to three and a half.
Q. A foot?
A. Yes, sir.
Q. How long, with reasonable diligence, would it have taken to have run this drift?

A. The reasonable length?
Q. Yes, sir.
A. Perhaps four days, with reasonable work on it, I should think—that is, two men.
Q. Did you do any further work at any time in that drift?
A. Yes, sir.
Q. State what it was and when you did it.
A. We continued and run it nine feet further.
Q. In the same drift?
A. Yes, sir; in the same drift.
Q. What was the character of ground you went through?
A. Well, at least the ground was loose at the time of the working.
Q. The same character of ground?
A. I don't think there was any difference.
Q. How many men did you have with you?
A. There were two men that worked there three days and a half.
138 Q. Who were they?
A. Mr. B. F. Smith and Mr. Kennedy.
Q. And Mr. who?
A. Mr. William Kennedy.
Q. What wages did you pay them?

Objected to by plaintiffs' counsel because it has reference to the following year; objection sustained.

Cross-examination by Mr. PATTERSON:

Q. Mr. Monoge, what connection have you with these mines, sir?
A. Which mines?
Q. The Monticello?
A. None whatever, excepting as a working man?
Q. How long have you been there?
A. Where—in the camp?
Q. How long have you been working on the Monticello?
A. I don't remember the number of days I worked there. I think four or five weeks, maybe, or six.
Q. When was this?
A. This was in August. I commenced in August—about the second of August, I think.
Q. You went up there with them when they took possession, didn't you?
A. No, sir.
Q. How long afterwards?
A. Well, four or five days, I should think.
Q. You, then, worked there. Did you have charge of the work?
A. Yes, sir.
Q. What did you say were the dimensions of this drift that you were talking about?
A. The first part of it?

Q. The dimensions of the drift was what you were asked and gave your answer once before. Give it again.

A. The work that was done in 1880, the drift was about
139 six feet high, three and a half at the bottom, and two and a half at the top in the clear.

Q. Mr. Smith says the drift he worked in was four and a half on the bottom and three feet on top, and that cannot be the same drift?

A. I didn't measure that in the clear.

Q. It must be another drift, then?

A. I couldn't tell you about that; this is a very small drift.

Q. That is what Mr. Smith said its dimensions were—four and a half at the bottom, three feet on top, and six feet high. Now, the drift you were in has two feet and a half on the bottom and only three and a half feet on top?

A. I said three and a half in the bottom and two and a half on top and about six feet high; that is the clear after it was timbered.

Q. How is this drift timbered?

A. It was posts and capped and a few lagging on top.

Q. What do you mean by a few lagging?

A. I mean poles.

Q. What do you mean by a few lagging?

A. To keep the dirt out.

Q. Is it a few, or lagged close?

A. It might be lagged closely.

Q. Is it lagged close; is it what you call ordinarily close lagging?

A. I have seen closer, but it is lagged well enough for the purpose.

Q. How about the sides; is it lagged on the sides?

A. I think it was one or two lagging on the sides between posts.

Q. What do you mean by one or two?

A. There was one or two between posts.

Q. With that exception it is open?

A. It is open, excepting one or two on each side.

Q. And what is on the sides, it is plain to be seen?

A. Yes, sir.

140 Q. Does it stand?

A. Yes, sir; it stands.

Q. Is it what you call rock in place?

A. The mineral appears to be in place; it is pretty loose rock.

Q. Is it what you as a miner would call rock in place?

A. The mineral appears to be in place—it is well defined; but the rock is——

Q. I am talking about the walls?

A. The rock is very loose on one side, and on the other side the mineral appears to be in place. The mineral appears to be in place; it is regular.

Q. Could you answer my question—it is a very simple one—would you as a miner call the walls rock in place?

A. I would call one rock in place; the other I would say was loose rock.

Q. Well, did you excavate into any of the foot wall in running this drift?

A. No, sir.

Q. That you are certain of?

A. Yes, sir.

Q. Did you go into the hanging wall?

A. Some; yes, sir.

Q. Didn't you have the same sort of rock in the discovery shaft you were talking about of the Monticello?

A. No, sir; they didn't.

Q. What was the difference?

A. Because this in the tunnel or drift was coarse rock—a good deal of it—and tolerably good size; some weighed a hundred pounds, perhaps, and some smaller. This in the shaft was picking ground; they picked it up fine; there was no hard rock there.

Q. The shaft was a sort of decomposed rock?

A. A good deal so.

Q. The drift was in hard rock, only loose and disjointed, as it was?

A. There was no hard rock there that I saw, excepting on
141 the lower side it appeared to be hard and in place—the upper side was all loose.

Q. It might have been loose, but you mean it was simply soft and decomposed, or do you mean it was hard rock disjointed and loose?

A. I mean it was hard rock disjointed and loose at a distance of sixteen feet from the surface.

—. ——.

A. From where they commenced to run this drift was fifteen to sixteen feet from the surface to the bottom of the drift.

Q. Was this drift run on the foot wall, or was it cut into through the foot wall?

A. It was run alongside of the foot wall.

Q. Run alongside of the foot wall?

A. Yes, sir.

Q. Was this a drift or a winze, properly speaking?

A. It was a drift; a winze, I believe, runs down; a winze is a different thing from a drift.

Q. We know that quite well. Say that is the side of the mountain, and that pencil represents the shaft sunk down through the mountain; didn't this winze or drift that you were speaking of, didn't it go through one way or the other along with the mountain?

A. No, sir; it run down with the mountain.

Q. And down on the vein, excepting it took the angle of the vein from the shaft?

A. This drift was about square with the shaft.

Q. The shaft was sunk perpendicularly, was it not?

A. Yes, sir.

Q. Say that represents the shaft perpendicularly into the earth, part of the distance, it run on the vein and then the vein left the shaft?

A. Yes, sir.

Q. Wouldn't that properly represent just about the drift that was run?

A. Yes, sir; but they didn't run it from the bottom of the shaft.

142 Q. Wouldn't that represent it?

A. Of course where the work commenced the vein was there; we followed the vein.

Q. When you speak of a drift, it didn't run literally from the shaft, but run down the same, continuing its course along the vein?

A. Yes, sir.

Q. That is more properly a winze than a drift?

A. It was run very near level; there was some incline, perhaps a foot, in the length of it.

Q. What was the angle of that vein?

A. I couldn't say.

Q. Forty-five degrees?

A. Somewhere in that neighborhood, I should think.

Q. About forty-five degrees from the horizontal?

A. I should think so.

Q. Do you know what the ordinary contract price was in that neighborhood in 1878?

A. No, sir; I do not.

Q. Do you know what it was in 1880, where men, for instance, weren't present, would want some work done in a shaft?

A. I have never taken any, but I have heard of others taking contracts at different prices.

Q. You don't know what the contract price for such work was in 1880?

A. Of course, there is different prices, because the ground varies a great deal in hardness.

Q. Contractors in taking a contract to do work had to take certain chances?

A. Of course they do sometimes.

Q. The ground might get hard or it might get soft; if it got hard they would lose money, and when it got soft they would make money?

A. Yes, sir; I believe so.

143 Q. And when contractors get contracts they run chances; if it was hard they lose by it; if it was soft they made by it?

A. Yes, sir.

Q. When were you in Iowa, Mr. Monoge?

A. I was there last winter.

Q. When did you return?

A. About the first of April.

Q. Didn't you return for the purpose of attending this trial—the trial of this case in April?

A. No, sir; I did not.

Q. Didn't you so state when you swore in this case before that you returned from Iowa for the purpose of being a witness?

A. No, sir; not in April; I returned last winter to attend it.

Q. What time last winter?

A. Some time in January; I don't remember the date.
Q. From Iowa?
A. Yes, sir.
Q. Did you then go back to Iowa?
A. I did.
Q. You paid your own expenses, then, to come back and attend this trial, didn't you, Mr. Monoge?
A. No, sir; they paid my expenses.
Q. Didn't you state on the trial that you paid your own expenses?
A. No, sir; I did not.

Redirect examination by Mr. SHARMAN:

Q. I didn't understand what reply you made in regard to contracts; did you mean to be understood — saying that it would be worth more to take a contract in shooting ground where there were day wages paid, or difficult ground—I want you to explain; I want to know what you said in answer to Mr. Patterson's
144 question as to whether or not when a contract was let it was not—I don't know how you formulated your question exactly —does that relate to the number of feet you contract to do or where there is no amount specified to be done except what is to be done by day's wages?
A. I believe I told him I wasn't acquainted with contract prices at that time.

(And pasted on the margin of the record here is the following map:)

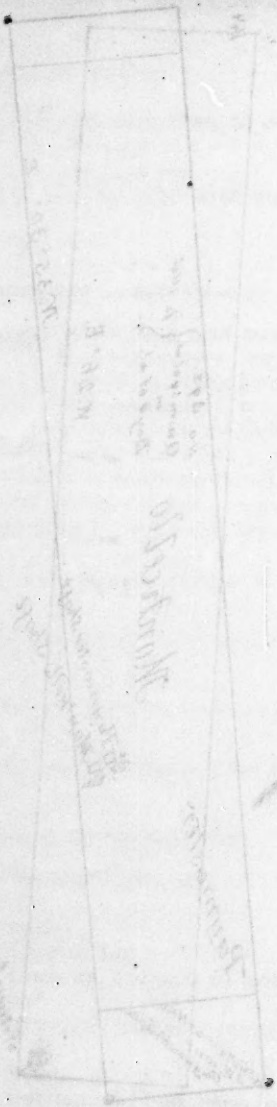
(Here follows diagram marked p. 144.)

GEORGE L. SMITH, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. SHARMAN:

Q. Mr. Smith, what is your business?
A. Mining.
Q. Where do you reside?
A. Chaffee county, Chaffee city.
Q. How long have you been engaged in mining?
A. Over twenty years.
Q. Are you interested in any mines there at present or have you been?
A. I am and have been.
Q. What mines do you say you had been interested in?
A. I discovered and sold some mines near the mines in question, now known as the Smith and Gray, but that is not the names of the mines, but they have taken those names for some cause; also the Lexington, or two-thirds of the Lexington mine, in that district.

Paymaster.
Manticello
No. 392.
Quimby et al.
and
Boyd et al.
h. 144
144
Paymaster Shaft
Manticello Shaft
W. 26° E.
N. 35° 30' E.
Witness tree



145 Q. Are you acquainted with the claim called the Monticello?

A. I am.

Q. And what was known as the Paymaster?

A. Yes, sir.

Q. Have you ever been in the shaft of the Paymaster?

A. Yes, sir; I was; well, that is, I was in the shaft.

Q. When was that?

A. In 1878 and in 1879; also in 1881; I think I wasn't in it in 1880.

Q. When you were there in 1881 did you see a drift that had been run from the shaft?

A. I did.

Q. Please describe the nature of that drift.

A. Well, the drift, I should judge, was three and a half or four feet wide in the bottom and perhaps not quite as wide on the top, and perhaps about six feet high, and was in at the time about twelve feet; they were at work in it at that time.

Q. Who was working it?

A. The Monticello Company, or it was understood it was such; they had just commenced.

Q. It was in about twelve feet?

A. It might have been fifteen—not to exceed twelve or fifteen; they had been to work perhaps a day, or probably more, and maybe less. I don't know how long they had been at work on the drift when I went down; I went down to see what was going on and I looked around.

Q. What did you discover there as to the character of the ground?

A. Well, it would be called what was an open crevice, with mineral in it—iron, galena, and carbonates.

Q. State whether it was hard or soft.

A. It was soft; what we call an open crevice.

Q. Picking or shooting ground?

A. It was picking ground.

146 Q. Are you enabled to say, from your knowledge of mining there and prices paid, what would be a reasonable price to be paid for running that drift, say, ten feet?

A. Ten feet from the shaft?

Q. Yes, sir.

A. Four dollars a foot would be a fair price.

Q. What were the wages paid to miners during the year 1880 in that district for doing that sort of work?

A. Per day?

Q. Yes, sir.

A. Three dollars per day is what the usual wages always have been in that camp, with some exception. Some men I considered a little better than others, and he would be paid more, and some less. Three dollars is the average miners' wages paid there.

Q. What is the highest miners' wages there or was paid at that time?

A. I don't know any particular price; I suppose some men got three and a half a day, and some three, and some two and a half.

Q. What is the highest price you know of having been paid there?

A. Well, I done considerable hiring myself, or some, that summer, and only paid three dollars.

Q. Just answer the question, What is the highest price you know of having been paid that year?

A. Three dollars is the highest I am positive of.

Q. Then, to run it in ten feet as you saw it, you estimate about four dollars a foot; that would be about forty dollars; is that it?

A. Yes, sir; I suppose it would.

Cross-examination by Mr. PATTERSON:

Q. Mr. Smith, I believe you say that this drift was two and a half or four feet on the bottom; is that the way you put it?

147 A. I should judge, three and a half or four feet on the bottom. I didn't measure it. It was a small drift I know.

Q. If it was three and a half feet it would be worth less, and if it was four feet it would be worth more?

A. I think not. I think they worked out what would be called the width of the crevice, from the best I could judge. I didn't examine it very closely, but it was a clear case that it was run on a crevice—a vein.

Q. Do I understand you to say, Mr. Smith, that the width of this on the bottom was the width of the crevice?

A. Well, I don't know definitely about that; it might have been some rock taken out on the bottom more than the width of the crevice, but I should judge the width of the crevice was three and a half or four feet on the bottom.

Q. But was that drift, as we call it, or winze—what was the foot wall of that drift or winze?

A. Limestone.

Q. Limestone?

A. Yes, sir.

Q. So that the width of the crevice had nothing to do with the width of that drift on the bottom because the crevice was on the sides—up and down on the sides?

A. No; the drift was run right in the crevice.

Q. I know the drift was run in the crevice according to your testimony, but it took the foot wall, or at least the foot wall of the vein was the foot wall of the drift, was it not?

A. Well, the foot wall of the vein was one side of the drift.

Q. Do I understand you to say that the foot wall of the drift—the foot wall of the vein was the side wall of the drift?

148 A. Yes, sir.

Q. And the bottom of the drift was in this vein matter?

A. Yes, sir; and also the top.

Q. Let that represent the side of the hill; the top of the vein, the apex of the vein, would run that way along the surface of the hill, or did it run up and down?

A. It run up and down from there—almost so.

Q. The vein run up and down the hill?

A. Just let me represent it. Let us represent — this paper as the claim is placed presumably, or that way when the claim was located; that vein run this way, but on examination and development it was proved to run this way up and down the hill, or very nearly so. That is the case beyond a question of doubt.

Q. That is the way it is, is it?

A. Yes, sir; that is the way it is, and this drift had been run down all the way; if they went far enough they would have come to the surface.

Q. Now, then, were the walls of this drift the hanging—were the side walls of this drift the hanging and foot wall of the vein?

A. There may have been some rock taken out. I didn't examine very closely as to recognize that, but some loose rock might have been taken out from the side to make the drift wide enough.

Q. You can't tell how much of that was taken out?

A. I cannot, but I would rather think some.

Q. There may have been some of the rock taken out upon both sides?

A. Possibly; yes, sir.

149 Q. And the difficulty in doing the work or the value of the work would depend somewhat upon the amount of the rock that was taken out from the upper and lower walls?

A. Yes, sir.

Q. Your estimate of four dollars a foot is based upon the theory that it was simply gangue or loose rock that was taken out of the vein?

A. It was based upon that; yes, sir; I worked some in the walls whilst I was there with a pick.

Q. The reason I was asking particularly about the claim is I don't quite understand it, Mr. Smith, and I am perfectly satisfied you can enlighten us. All the witnesses have testified that the vein, instead of dipping into the hill or crosswise of the hill, dips with the hill; that is what all of the witnesses have testified to to this time.

A. It dips kind of down the hill.

Q. This being the surface, the dip is not, perhaps, as steep as the hill, but instead of going in that way it rather dips with the direction of the hill?

A. Not exactly; it is partly correct, sir. This I would represent as the hillside here, and this vein is running diagonally across this claim, dipping that way down the hill partly, and up here it would be in the hill and here down the hill, or if it should go further up the hill it would be dipping directly into the hill; up here at the discovery shaft it is dipping down the hill.

Q. It is dipping with the slope of the hill?

A. Partly; the vein is kind of dipping down the hill.

Q. Where you discovered the apex of the vein the vein is dipping with the surface of the hill?

A. Yes, sir; at that individual point it is, and further up
150 the hill it would be dipping into the hill.

Q. That would depend, however, upon the contour of the hill?

A. Yes, sir; altogether.

Redirect examination by Mr. SHARMAN:

Q. Mr. Smith, I omitted to ask you some questions; do you know Mr. William Shephard?

A. Yes, sir; I do.

Q. How long have you known him?

A. I don't know exactly how long I have known him. I couldn't tell the exact year. I went with him to that camp, though, in 1878; we went there together.

Q. Do you know anything about the location by him of the original Paymaster?

A. Yes, sir; I was there the day after he located it or perhaps the same day when he discovered it, or thereabouts, at least.

Q. Well, what, if any, work did he do on the Paymaster in the way of sinking a shaft?

A. Well, he sunk a shaft, I should judge, six or seven or eight feet in—six or eight feet long and four or five feet deep on the lower side; it was dug on this hillside, and this was an adit, we will say, seven or eight feet long and four and a half or five feet on the lower side; the upper side may have been eight or nine. I judge the hill pitched at an angle of about thirty degrees.

Q. When was that done?

A. In 1878, perhaps September; I am not certain as regards the month, but I should judge, though, in September.

Q. In September, 1878?

A. Yes, sir.

Q. Well, was there any other work done there that you
151 saw on that claim?

A. I don't know of any other.

Q. How long did you continue to be familiar with the work that was done there?

A. Well, you might say almost up to the present time; certainly up to 1881—during the year 1881.

Q. What, if any, further work was done upon this adit you spoke of during 1878?

A. I left there on the tenth day of November, 1878, and what they done after I left I don't know.

Q. Did you ever see it again?

A. I saw it again in 1881. I saw it in 1880, perhaps, but I never noticed it closely from the fact that there was no one working there and I paid no attention to it.

Q. Did you notice it particularly in 1881?

A. Well, I was there at the time I speak of going down that shaft.

Q. Well, that is the other shaft?

A. Yes, sir.

Q. Well, that was not the shaft you first referred to?
A. No; the shaft I first referred to was near this shaft, perhaps. I don't know exactly; I should judge about six or eight feet, perhaps; maybe ten. I couldn't tell you exactly.
Q. What was the depth of that shaft when you saw it in 1881?
A. I didn't notice it closely in 1881. I couldn't tell you that.
Q. When did you last pay any attention to it?
A. In fact, there had been so much work done there you couldn't tell. There had been a great deal of work done there and filled up.

152 Upon request of defendants' counsel the stenographer here read the testimony of George Cordear as given by him on the second trial of this cause, and is as follows:

GEORGE CORDEAR, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your name, age, and place of residence?
A. Cordear is my name; residence in Leadville—George Cordear.
Q. What is your occupation?
A. Miner.
Q. How long have you been a miner?
A. Around Central, Leadville, Hall's Gulch, and Montezuma and Chaffee county.
Q. How many years?
A. About eleven years.
Q. State whether you are acquainted with the claim called the Paymaster, in the Monarch mining district.
A. Yes, sir.
Q. When did you first become acquainted with that claim?
A. In 1880—in September.
Q. In September, 1880?
A. Yes, sir.
Q. Did you do any work on it?
A. I did.
Q. For whom?
A. Tom White.
Q. Who worked with you?
A. Ben. Smith.
Q. The witness last on the stand?
A. Yes, sir.
Q. State how much work you and he did there.
A. Well, I think it was ten feet four inches on one side and about eleven feet on the other.
Q. What made it longer on one side than on the other?
A. Well, the other side wasn't sunk down with the lead, and we run a drift along with the lead and made one side a little longer than the other.
Q. Was this drift run horizontally or on an incline?

153 A. It was run on a little incline about 18 inches in the ten feet of a pitch, I should judge.

Q. What kind of material did you do that work in?

A. It was all galena and carbonates.

Q. State whether it was blasting or picking.

A. It was all picking work.

Q. Was it picking at the commencement or not?

A. Yes, sir; it was picking right at the beginning.

Q. Where was that work located with reference to the claim—whether it was a drift off the shaft or not?

A. It was a drift off the shaft.

Q. About how far from the top of the shaft?

A. I should judge about twelve feet; I never measured it.

Q. Do you know how deep that shaft was?

A. I don't know, but I should judge about forty feet.

Q. You didn't measure it?

A. No, sir; I never measured it.

Q. State how far down from the top of that shaft was timbered?

A. Well, I should judge about fourteen feet or sixteen—somewhere along there.

Q. State whether it was timbered down to the bottom of this drift—run off?

A. Yes, sir; it is timbered below that, I should judge about two feet—somewhere along there. It might have been more; I am not positive about it, but it was somewhere along there.

Q. You ran it ten feet in length?

A. Yes, sir.

Q. How wide and how high?

A. Well, I should judge it was three by six feet in the clear with the timbers.

154 Q. Inside of the timbers?

A. Yes, sir.

Q. Who did the timbering?

A. Well, me and Mr. Smith together put in the timbers.

Q. Who helped you, if any one?

A. Me and Mr. Smith.

Q. You and Mr. Smith did it all?

A. Yes, sir.

Q. Cut the timbers on top of the ground and carried them in and fit them in?

A. Yes, sir.

Q. How did you do it?

A. Mr. Smith was at the windlass and I was down in the drift.

Q. How long were you working there?

A. Six days we worked in the drift.

Q. Can you tell me from day to what day?

A. No, sir; I couldn't. I think it was somewhere about the twelfth or fourteenth. We went to work in September, but I can't say exactly the date.

Q. What day of the week did you commence?

A. On Monday.

Q. What day did you quit?
A. On Saturday.
Q. State whether you did any work preparatory to doing that work or not—getting ready to do it.
A. I worked there on the Sunday before; I didn't work; but I went up there with Tom White the Sunday before; it was the day before on Sunday.
Q. Did you take anything up with you?
A. No, sir; we did not.
Q. How much did Mr. White give you a day for that work you did there?
A. He gave me four dollars a day.
Q. State what such work was usually worth in that neighborhood at that time, if you were acquainted with the value of that work.

155 A. I think they paid all the way from three and a half; the company paid three dollars and the contractors paid three and a half; I believe that was the average wages.

Q. I will ask you whether you and Mr. Smith, whilst you were working there on that claim at that time for Mr. White, did any more than good, fair days' work*ed?*

Objected to. Objection overruled.

A. No, we didn't; we done an average day's work.
Q. Had there been any work done in that shaft that year previous to the time of your going there?
A. I couldn't say.
Q. Did there appear to be?
A. I should judge there was; I couldn't tell how long it was since the work was going on there.
Q. There was some work done there, but you couldn't tell when?
A. No, sir; I couldn't tell when it was done.

Cross-examination by Mr. BISSELL:

—. How far from the top of that shaft down was it that this drift was commenced, as nearly as you can judge?
A. Well, I should judge about twelve feet; somewhere along there.
Q. About twelve?
A. Yes, sir.
Q. This main shaft of forty feet was really a part of another shaft that crossed it on the end?
A. No, sir; it was all one shaft.
Q. Wasn't there another portion of the shaft running out this way?
A. I think there was where the discovery was; they might have been in one, but there was a dump there that filled it up.
Q. How far below this drift was it, if any distance beyond, that the lagging continued in the shaft?

156 A. I should judge about two feet.
Q. Below the bottom of it?
A. Below where we worked in this drift.

Q. Below that point it was not timbered at all?
A. No, sir.
Q. How did you fix your platform in that shaft to support the weight of your bucket in taking out the dirt?
A. We put braces across into the cribbing of the shaft.
Q. Into the cribbing itself?
A. Yes, sir.
Q. You didn't make any connection in the rock at all?
A. No, sir; we just put it in the cribbing of the shaft.
Q. And put your platform on top?
A. Yes, sir; we put the platform on top of those bridges.

Then defendants' counsel read the testimony of Wm. Quimby, taken on the first trial of this cause, as per stipulation on file, which is in words as follows:

In the District Court of Chaffee County.

J. SCOTT BOYD *et al.*, Plaintiffs,
vs.
W. M. QUIMBY *et al.*, Defendants.

It is hereby agreed, by and between the plaintiffs herein and defendants Quimby and Boon, that the testimony taken at the trial of this action in January, A. D. 1882, or at the present term may be given and read in evidence at any and every trial of this action with like effect as though such testimony was and had been duly taken as and in depositions of the several persons, respectively, who gave such testimony or any thereof, and the stenographer of said
157 court may read from his notes so much of said testimony as was taken by him so far as the same is in the testimony of any absent witness; all such testimony to be subject to objection at the trial orally so far as incompetent or irrelevant.

Dated Buena Vista, May 10, 1882.

CHAS. CAVENDER,
Att'y for Plaintiffs.
SHARMAN & CASPER,
Att'ys for Def'ts.

W. M. QUIMBY, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. WHEAT:

Q. State whether you are one of the defendants.
A. I am.
Q. What is your name?
A. W. M. Quimby.
Q. State whether you put a discovery stake on the Monticello claim or not.
A. I did.
Q. When?
A. On the 27th of July, 1881.

Q. State whether you had any assay made of any material in the bottom.

A. Yes, sir.

Q. What did it assay?

Objected to. Objection sustained.

Q. State what material there was in the bottom of the discovery shaft.

A. I didn't go down into it; I saw some which was taken out which was iron carbonates, I should say, with some lead in it, and silver.

Q. State who had that work done—the sinking of that shaft and the running of that drift.

158 A. I was one of the parties who had it done, and Mr. Boon and Mr. Welch, and we hired Mr. Monogue to attend to it.

Q. State whether you saw what was in the bottom of that discovery shaft of the Monticello with reference to any vein or lode.

A. There was a vein.

Q. State whether you saw any mineral come out of it.

A. I saw it on the dump.

Q. State whether the mineral you saw on the dump that came out of the drift looked like the same material that you saw in the bottom.

A. Well, it looked like the same galena that was in the shaft; I considered it the same thing.

Q. State what your occupation is.

A. Mining.

Q. How long have you been mining?

A. About three years.

Cross-examination by Mr. THOMAS:

Q. Where have you been mining three years?

A. Chaffee.

Q. Down in that part of the county?

A. Yes, sir.

Q. When were you first apprised that the assessment of 1880 had not been done on the claim?

A. Between the 24th and 27th of July.

Q. Who comprised the parties — locators besides yourself and Mr. Boon?

A. Mr. Welch.

Q. One of the defendants?

A. Yes, sir.

Q. Was it then after that that you located the claim

A. It was done on the 27th.

Q. Who directed the sinking of the discovery shaft on the Monticello?

A. I think Mr. Boon was in charge of it part of the time and Mr. Monogue the balance.

Q. Were you about there at the time the discovery shaft
159 was being sunk?
A. Well, sir; I am not positive.
Q. Were you there at any time when the discovery shaft was being sunk?
A. Yes, sir.
Q. How deep do you say that shaft was when it was surveyed?
A. I didn't measure it.
Q. Give your best idea.
A. I suppose eleven feet.
Q. How far is that shaft from the forty-foot shaft where the drift leads off?
A. I couldn't tell, but I should say from three to four feet; something like that; I never made a measurement of any of it.

Defendants' counsel then read the testimony of J. F. Millner, which was taken on the first trial of this cause and extended as per stipulation, on file, and is as follows:

J. F. MILLNER, called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your name?
A. J. F. Millner.
Q. What is your occupation?
A. Civil engineer and surveyor.
Q. Did you ever survey the Monticello mining claim?
A. I did.
Q. (Handing witness location certificate.) Look at that and state whose handwriting that is.
A. That is my handwriting.
Q. State who drew that plat.
A. I did myself.
Q. Describe that so the jury can understand what it is.

(Witness describes plat to the jury.)

Q. State where that stake is on the plat.
A. That stake is located here.
160 Q. Is it where that dotted line is?
A. Yes, sir; I placed it as the certificate shows it.
Q. You mean the location certificate?
A. Yes, sir.
Q. Where is the southwest corner stake, with reference to where it is situated on the ground?
A. Well, I should make it about there.
Q. It is represented there in blue lines according to the location certificate of the Paymaster?
A. According to the certificate.

Q. And the yellow lines are the lines of the Monticello as you surveyed it?

A. Yes, sir.

Q. State where what is called the discovery shaft of the Paymaster is.

A. I went to a shaft that was said to be the shaft of the Paymaster.

Q. State whether that shaft was run to this drift.

A. Yes, sir.

Q. How many feet is it from that shaft to the side line of the Paymaster according to the certificate?

A. Thirty-three feet.

Q. State where the discovery shaft of the Monticello is with reference to the Monticello claim as you surveyed it.

A. It is in the center.

Q. State how far it is from the end.

A. There is one shaft 265 feet from the end; that is the discovery shaft; there is another shaft sunk 27——

Q. How far is the discovery shaft?

A. That is 265 feet from the end.

Q. From what end is that?

A. That is from the west-end line.

Q. How far from the other end line?

A. It is the remainder of the fifteen hundred feet.

161 Q. How wide is the Monticello claim?

A. The width is three hundred feet; it laps 117 feet on the "Lookout" mining claim.

Q. State, with reference to the permanent objects, monuments, and stakes which are mentioned in this location certificate of the Monticello, whether they are correctly given or not.

A. They are.

Q. State whether this map represents the two claims in conflict with each other correctly or not.

A. Yes, sir.

Q. According to the location certificate?

A. Yes, sir; according to the location certificate of the Paymaster and the survey of the Monticello.

Q. State what the depth of that Monticello shaft was.

A. That was ten feet and six inches at the lowest rim, and it was fifteen or sixteen feet at the highest rim.

Q. When did you first survey that?

A. The first of August, 1881.

Q. What was in the bottom of that shaft mentioned?

A. There was a vein at about three and a half feet—that is, one main vein about three and a half feet, and there was another small one about five inches wide.

Q. What was in these pay streaks?

A. Galena and lead and iron carbonates.

Q. Was any quartz in there or not?

A. There was.

Q. Was all that in place or not?

A. That was all in place.
Q. In rock?
A. In rock.
Q. What kind of rock constituted the walls of that vein?
A. Grey lime, I believe.
Q. State whether what was in the bottom of that shaft was
162 a part of that crevice or not.
A. It was.
Q. State in what direction this vein run that was in the shaft; did it run towards the drift or not?
A. It run towards the other line of the Monticello—towards the north. I would consider it likely to be a spur of the same vein.
Q. Part of the same vein, but a spur?
A. Yes, sir.
Q. Did you also measure the drift in the other shaft?
A. I did.
Q. What was its length?
A. Ten feet and four inches, I think it was.
Q. Was that on its shortest side?
A. I think it was on the lowest side. I only measured it on one side and found it to be ten feet and four inches.
Q. State whether there was a discovery stake or notice put up.
A. There is no original notice put up on the Paymaster; there was a stake there, but it was not original at the time I surveyed the Monticello.
Q. With reference to the Monticello, was there a stake or notice put up?
A. There was a notice put up on the first of August, 1881, on which there was the name of the lode.
Q. What was the name?
A. The Monticello.
Q. And the date of the location?
A. Yes, sir.
Q. What date?
A. July 27th.
Q. What year?
A. 1881.
Q. What else?
A. Number of feet claimed.
Q. Were the names of any individuals on it?
A. The names of three individuals.
Q. What names?
A. J. S. Boon, W. M. Quimby, and Jacob Welch.
163 Q. As the locators?
A. Yes, sir.
Q. Does the description of the claim correspond with the location certificate?
A. Yes, sir.
Q. How was the notice written?
A. It was written with a lead pencil.
Q. Where was it placed?

A. It was placed on the claim near the discovery shaft.
Q. State whether it was a plain sign or notice, or not.
A. It was.
Q. Now, state with reference to the boundary stakes.
A. There was, besides the location stake, two good, substantial posts put up at each end.
Q. State whether there was one at each corner or not.
A. Yes, sir; one at each corner four inches wide and four feet long. They were marked on the side in towards the claim, giving a brief description of the corner.
Q. Were there any other stakes besides the four corner stakes?
A. There were two side stakes, one on the east side and one on the west side. They were 750 feet north, twenty-six degrees east of the south end corner stakes. They were hewn four inches in diameter and four feet long, and marked on the sides in towards the claim. These stakes were marked, one the east side-line center of the Monticello lode and the other was marked the west side-line center stake Monticello lode, and date of survey.

Cross-examination by Mr. THOMAS:

Q. Mr. Millner, when you measured the shaft and say it was ten feet six inches, what was the exact date?
164 A. It was about the third day of August.
Q. Was that before or after the defendants began working?
A. After the defendants began working.
Q. How much work had been done in this drift that you speak of when you measured it?
A. There was about ten feet of work done.
Q. Was it ten feet four or six inches?
A. Ten feet four inches.
Q. Did you measure which was pointed out as the discovery shaft of the Paymaster at all?
A. I did not.
Q. Whose names did you find on the discovery notice?
A. There was J. S. Boon, W. M. Quimby, and Jacob Welch.

Redirect examination by Mr. WHEAT:

Q. State whether that drift extended any further than ten feet and four inches at the time you measured it.
A. It did not.
Q. That was done on the first of August when you measured it?
A. I measured it on the third day of August, after I made the survey.
Q. You wasn't there after that?
A. No, sir; I was not.

Defendants' counsel offer in evidence the location certificate of the Monticello lode, which was objected to by plaintiffs' counsel because it does not conform to the allegations of their cross-bill and is not at all the certificate that is set out, made by the locators Quimby, Boon, Welch, and Harrington, having two-fifths of the lode, the

largest owner- in the lode, and, according to the allegations of
165 their cross-complaint, their stake, and their testimony it is not in at all, and consequently this cannot be the certificate of their lode; which objection the court overruled, and to which ruling the plaintiffs, by their counsel, then and there duly excepted, and said certificate was marked "Def'ts' Ex. 1" of this date, and is in the words and figures following, to wit:

Know all men by these presents that we, W. M. Quimby, J. S. Boon, and S. Jacob Welch, of the county of Chaffee, in the State of Colorado, claim, by right of discovery and location, fifteen hundred feet, linear and horizontal measurement, on the Monticello lode, along the vein thereof, with all the dips, variations, and angles, together with one hundred and fifty feet in width on each side of the middle of said vein at the surface, and all veins, lodes, ledges, and deposits and surface ground within the lines of said claim, 265 feet on said lode running S. 26 degrees W. from the center of the discovery shaft and 1,235 feet running N. 26 degrees E. from said center of discovery shaft; said claim is situate on the Monarch Mountain, in Monarch mining district, county of Chaffee and State of Colorado, and is bounded and described as follows: Beginning at cor. No. 1, on the summit of Monarch Mountain, thence north 26 degrees E. 1,500 feet to cor. stake No. 2; thence N. 64 degrees W.
300 feet to cor. stake No. 3, from which Mt. Keys bears N. 27
166 degrees 30′ W.; Iron Mt. bears N. 65 degrees W.; thence S. 26 degrees W. 1,500 ft. to cor. No. 4; thence S. 64 degrees E. 300 ft. to cor. stake No. 1, the place of beginning, from which a green spruce tree ten in. in diameter, marked M, bears S. E., 6 m. distant. The east side of the Monticello mining claim laps on the west side of the Lookout mining claim 117 feet, and these claims lay parallel. From the discovery shaft of the Monticello mining claim the main shaft of the Smith and Gray mine bears S. 54 degrees W., magnetic survey.

P. S.—The above-named claim is a relocation of a part or parcel of the claim known as the Paymaster.

Said lode was discovered on the — day of ——, A. D. 18—.

Date of location July 27, A. D. 1881.

Date of certificate Aug. 4th.

W. M. QUIMBY, one-fifth (1/5). [SEAL.]
J. S. BOON, one-fith (1/5). [SEAL.]
S. JACOB WELCH, one-fifth (1/5). [SEAL.]
A. W. HARRINGTON, two-fifths (2/5). [SEAL.]

Endorsed: No. 9666. Location certificate, Monticello lode.

STATE OF COLORADO, } ss:
County of Chaffee, }

OFFICE OF COUNTY CLERK AND RECORDER.

I hereby certify that the within instrument was filed in this office for record at 10 o'clock a. m., Aug. 15th, A. D. 1881, and was duly recorded in Book No. 14, page No. 286.

JAMES H. JOHNSTON, *Recorder,*
Fees, $2.00. By W. H. KELLOGG, *Deputy.*

167 And thereupon the defendants rested.

And the plaintiffs, to further maintain the issues herein on their behalf, give in rebuttal as follows—that is to say:

Plaintiffs' counsel read the testimony of Thomas White, taken on the first trial of this cause, as per stipulation on file, and is as follows:

THOMAS WHITE, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. THOMAS:

Q. Mr White, where do you live?
A. I haven't any particular residence now.
Q. Where did you reside in 1878—from 1878 to 1881?
A. From 1878 I was in Leadville.
Q. Where were you living during the fall of 1880?
A. Chaffee.
Q. Are you familiar with and acquainted with the claim near Chaffee, known as the Paymaster?
A. Yes, sir.
Q. Do you know of any work being done there in 1880?
A. In 1880 I contracted to do the assessment work that was done on it.
Q. When was that begun or finished?
A. Either September or October; I would not be certain which.
Q. About how many days were you engaged in that, and how many men were engaged in doing that work?
A. Smith and Cordear worked there six days.
Q. What tools did you take up there, Mr. White, for the purpose of doing that work?
168 A. We brought some picks and shovels up.
Q. Did they use your tools?
A. These tools, I think, must have belonged to the Monarch Mining Company or some miner; I don't know who may have left them there from the years previous.
Q. What was the condition of the work in the shaft, Mr. White?
A. Well, there was mineral inside there, and the previous year we sunk down mostly through the mineral.
Q. What was the length of that drift when you left it?
A. Well, that drift, according to my measurement, must have been pretty close on to twelve feet.
Q. Did you measure correctly?
A. I don't know.
Q. But to the best of your knowledge, did you?
A. Well, I had better explain to the jury the way I measured it.
Q. When did you measure that?
A. That was Friday evening before.
Q. What was the character of the timber, if you know?
A. Pine timber.
Q. Mr. White, have you had any knowledge of work of that sort in the camp?

A. Yes, sir; I had done a great deal of it.

Q. Do you know what work of that kind was worth at that time in that camp?

A. Some people do work cheaper than others will.

Q. On about an average at that time, what was such work worth in the community or in that camp?

A. Well, I estimated it to be worth eight dollars a foot.

169 Q. Do you think that was reasonable?

A. Well, I thought so.

Q. What was the average contract price that was paid for doing work of that kind at that time in that district?

A. About the only party that was having any work of that kind done was the Monarch Mining Company, and they paid all that summer from eight to ten dollars a foot.

Q. For that kind of work?

A. Most of it was that same kind of work.

Q. What would be a fair average price for work of that sort?

A. Well, I don't think eight dollars a foot would be too much.

Q. Mr. White, you may state how much you were paid for running that drift.

A. I was paid one hundred dollars.

Q. By whom?

A. Major Hulbert there gave me a check, I believe, on Jackson's Hotel.

Q. What was the contract price?

Objected to. Objection sustained.

Q. Mr. White, how is the claim situated with reference to timber line?

A. It is not far below timber line.

Q. How far from there?

A. About fifteen hundred feet or fourteen hundred feet—somewhere thereabout.

Cross-examination by Mr. WHEAT:

Q. In estimating the value of this work, is your estimate based on what it cost to do it or for what you would be willing to contract to do it?

A. I base it on what I got for it.

Q. What you were paid for it?

A. Yes, sir.

Q. You don't base it, then, on what it would cost and for

170 the material to do such work?

A. I don't base it on that.

Q. You say it is worth a certain sum per foot, and you don't base that estimate upon the actual cost of procuring such work to be done, but upon what you took a contract to do it?

A. Well, to make you understand, I can explain how this contract was made. I estimated this on what I got for it, one hundred dollars.

Q. Now, this work was done for Smith and Cordear?
A. Yes, sir.
Q. How much did you pay these men per day?
A. I paid Smith three dollars and a half a day.
Q. How much did you pay Cordear?
A. Four dollars.
Q. That was more than the general run of wages, was it not?
A. Good wages.
Q. Big wages, was it not?
A. Well, I don't know how you would look at it.
Q. Wasn't the usual wages in that neighborhood, for such work as they did that year, at the time they did it, three dollars a day?
Q. Was it not three dollars?
A. Yes, sir.
Q. You hired a number of men that summer at three and a half a day?
A. Yes, sir.
Q. What was the usual wages for such work as they did per day, in that section at that time?
A. I suppose about three and a half or three dollars. Some paid more, and some paid two and a half and board.
Q. The three-and-a-half men boarded themselves?
A. Yes, sir.
171 Q. You spoke of carrying up some tools.
A. Yes, sir.
Q. What tools did you carry up and from where did you carry them?
A. I carried them from Chaffee.
Q. How far was that?
A. I couldn't tell the exact distance.
Q. State as near as you can.
A. I don't know; I couldn't tell how many feet it is.
Q. Well, is it over a mile?
A. Well, I don't think it is.
Q. Is it a mile?
A. Yes, sir; maybe a mile; it is a very difficult trail.
Q. How long did it take to carry them up?
A. It took—I don't recollect exactly how long it did take; it didn't take a half day quite.
Q. How many were taking them up?
A. Two of us.
Q. You and Cordear?
A. Yes, sir.
Q. This work done in that tunnel, do you say it required any blasting or not?
A. I don't know that, sure.
Q. You don't know whether it required blasting or whether it was all digging?
A. I have no positive recollection about that.

Plaintiffs' counsel offered to read in evidence that portion of the

affidavit in support of the motion for continuance made upon the second trial of this cause which sets forth what Thomas White would have sworn to if personally present upon that trial, contending that the same came within the stipulation which is on file, pertaining to the reading of testimony of absent witnesses.

To which the defendants' counsel objected, and which ob-
172 jection the court sustained; and to which ruling the plaintiffs, by their counsel, then and there duly excepted.

Plaintiffs' counsel offer in evidence the affidavits of annual labor for the years 1880 and 1881, which were admitted, and they are the statutory affidavits to the effect that $100 worth of work was done on the Paymaster claim during the years 1880 and 1881 by the plaintiffs.

THOMAS PENROSE, recalled on the part of the plaintiffs, testified as follows:

Direct examination by Mr. PATTERSON:

Q. Mr. Penrose, where were you living in 1879?
A. In 1879, Chaffee, sir.
Q. Chaffee county?
A. Yes, sir.
Q. Where were you living in 1880?
A. I was in Chaffee.
Q. Were you acquainted with the mine in controversy—the Paymaster?
A. Yes, sir; I am.
Q. I wish you would state to the jury the character of the ground or the rock through which that shaft is sunk on the Paymaster lode.
A. It is lime rock, sir.
Q. Lime rock?
A. Yes, sir.
Q. Is it lime rock from the surface down?
A. No, sir; not all the way; it was through a good deal of mineral.
Q. Do you know where it is situated, Mr. Penrose?
A. Yes, sir.
Q. What is your business?
A. Mining, sir.
Q. How long have you been mining?
A. Seventeen years.
Q. What character of mining have you done, Mr. Penrose?
A. Pretty much all kinds.
173 Q. Prospecting?
A. I never prospected in my life.
Q. You done contract work and done work in mines by the day?
A. Yes, sir.
Q. How long did you say?
A. Seventeen years.

Q. Do you know the ground in which this drift or winze was run, which was talked about?

A. In sinking the shaft; that is all I know.

Q. What do you know about the sinking of the shaft?

A. It is pretty hard rock where we sunk in the shaft.

Q. Did you work in the shaft?

A. Yes, sir.

Q. Do you recollect the shaft at a point from twelve to fifteen or eighteen feet from the surface?

A. From twelve to fifteen?

Q. Yes, sir; from a point where this drift or winze was run off?

A. I don't exactly remember that.

Q. At the point where the vein left the shaft?

A. It is about eleven feet, I think.

Q. Do you recollect the character of the rock there?

A. Yes, sir; it is lime rock on both sides.

Q. Starting from that point and running a drift, say, that will be four feet wide at the bottom, three feet at the top, and six feet high, properly timbered and lagged, what would you, as a miner, say it was worth to do such work?

A. Ten dollars a foot, sir.

Q. In giving that estimate, do you take into consideration the rock as it appeared in that shaft at the point where the vein takes off, and you also take into consideration the locality; how far was this from timber line?

174 A. I don't know, sir; I never took any notice at all.

Q. Were you ever in the drift, Mr. Penrose?

A. No, sir; I was never in the drift.

Q. When were you last in the shaft?

A. I was in the shaft in 1879.

Q. That was the last year you were in it?

A. Yes, sir.

Q. And you helped to sink the shaft?

A. Yes, sir; it was about ten or eleven feet.

Q. State to the jury why you say that was worth ten dollars a foot.

Objected to by defendants' counsel.

Cross-examination by Mr. SHARMAN:

Q. So you were never in this drift at all?

A. No, sir; I was never in the drift.

Q. So you couldn't state very well what sort of ground it was?

A. I know what ground we went through in the shaft.

Q. That is all you know—what kind of ground you went through in the shaft?

A. No, sir.

Q. But you were never in the drift?

A. No, sir.

Redirect examination by Mr. PATTERSON:

Q. Had you done contract work in that locality, Mr. Penrose?

A. Yes, sir.

Q. When?
A. In 1879 and 1880.
Q. Upon what claim?
A. Upon the Monarch claim and Paymaster claim.
Q. How did the rock that you did work on in those claims, in 1879, correspond with the rock that was perceptible in this shaft from the point at which this vein took off?
175 A. I didn't see much difference in them; it is just about the same.
Q. What did you get for that work in 1879?
A. I got eight dollars a foot and ten dollars a foot, and I got twelve dollars a foot.
Q. Did you make or lose money?
A. Sometimes I lost and sometimes I gained.

JOHN F. ROBAR, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. PATTERSON:

Q. Mr. Robar, where do you live?
A. Bonanza.
Q. Where were you in 1879 and 1880?
A. Chaffee.
Q. What is your business?
A. Mining.
Q. How long have you mined?
A. Nineteen years.
Q. Are you acquainted with this forty-five foot shaft on the Paymaster?
A. Yes, sir.
Q. How did you become acquainted with it?
A. I had charge of the work there at that time.
Q. At what time did you have charge of the work?
A. In 1879.
Q. Did you have charge of the work—do you mean that you had charge of the work when this deep shaft *sunk* was sunk?
A. Yes, sir.
Q. When were you in the shaft after that?
A. I never was in the shaft after it was sunk.
Q. But you had charge of the sinking of the shaft in 1879?
A. Yes, sir.
Q. Do you recollect, Mr. Robar, where the vein takes off
176 about eleven or twelve feet from the surface?
A. Yes, sir.
Q. What is the character of the rock at that point?
A. Lime rock.
Q. Taking into consideration the locality of that claim, its difficulty of access and all of its surroundings, the price of labor, and every thing of that sort, what, in your judgment, would be a fair price, taking into consideration the character of the rock that

appeared in that shaft at that point, for running a drift on that vein a distance of eleven or twelve feet—how much per foot?

A. It would be worth nine or ten dollars, I should judge.

Q. Between nine and ten dollars?

A. Yes, sir.

Q. And you judge of its value, as I understand you, from the character of the rock as it appears in the shaft at the point where the drift commenced?

A. Yes, sir.

Q. Did you do any contract work in that locality?

A. Yes, sir; I contracted there in the summer of 1880.

Q. On what claim?

A. I contracted on the Monarch, the Emily Morton, and the Great Republic. I think that is the name of the claim for Mr. Boon.

Q. How did the work you contracted to do there correspond with the rock and the condition of that shaft as it appeared where this vein ran off?

A. It is all about the same character of rock in the camp.

Q. And the price you mention would be considered a fair average contract price for such work in that locality?

A. That is as low as I would take it for myself.

Q. Well, would you consider that a fair average price for
177 such work?

A. Yes, sir.

Cross-examination by Mr. SHARMAN:

Q. You say you never were in that shaft after the drift was run?

A. No, sir.

Q. How do you know whether it starts out, then?

A. I know where we timbered it and I heard the testimony—two feet from the bottom of the timber.

Q. All you know about that is what you heard, then?

A. That is all.

Q. You never were in the drift yourself?

A. No, sir.

Q. You don't know whether it is picking or shooting ground?

A. No, sir.

Q. It would make a great deal of difference in the value of the labor whether it was picking or shooting ground?

A. It would make a difference after you got the work done.

Q. What do you mean by that?

A. A man by taking a contract takes it by what is in sight.

Q. A contract to run it so many feet?

A. Yes, sir.

Q. Suppose there was no specified number of feet?

A. Then it would be a different thing.

Q. Then it would be for what wages would have to be paid in order to get it done?

A. If it was worked by the day it would.

Q. If two men go running through picking ground in a week it wouldn't be worth as much as that if that work could be done in a week?

A. I don't understand that.

Q. If two men working in this picking ground could do it in a week, it wouldn't be worth nine dollars a foot, would it?

178 A. If I took a contract——

Q. What has that got to do with it?

COURT: Can you not answer that other question, Mr. Witness. If two men could do the work in a week would it be worth nine dollars a foot if paid by day labor? That is the question.

WITNESS: Why, no; it wouldn't be worth that if it was paid in day's labor.

Q. What would it be worth?

A. It would be worth just what you get it done for.

Q. If you get it done for forty-four dollars that would be all it is worth?

A. ——.

Redirect examination by Mr. PATTERSON:

Q. You say when a man takes a contract he takes it by what is in sight?

A. Yes, sir.

Q. Now, a supposititious case was asked you; I will ask you this question: If you were required to do a hundred dollars worth of work in that shaft in running that drift from what was in sight at the commencement of it, would you or not do any more than what was done there for a hundred dollars?

Objected to by defendants' counsel, which objection the court sustained; to which ruling of the court the plaintiffs, by their counsel, then and there duly excepted.

Plaintiffs' counsel asked to have the testimony of B. F. Smith read as given on the last trial of the cause.

Which was objected to, because the witness was personally
179 present, and which objection was sustained by the court.

B. F. SMITH, recalled on the part of the plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. Did Mr. Holbrook ever come to the Paymaster mine, in 1880, while you were there working in the drift?

A. He did, to the Monticello.

Q. Did you show him in this drift the point where you commenced in 1881?

A. I did.

Q. Did you show him where you left off in 1880?

A. Yes, sir.

Q. That was the true point, was it?

A. Yes, sir; as near as I could get at it.

Cross-examination by Mr. SHARMAN:

Q. What did you show him?
A. A mark on the side of the wall.
Q. What was the length of it?

Objected to by plaintiffs' counsel. Objection sustained.

By request of plaintiffs' counsel the stenographer read the testimony of Fred. G. Bulkley as given on the second trial of this cause, and which is as follows:

FRED. G. BULKLEY, called and sworn on the part of the plaintiffs, testified as follows:

Direct examination by Mr. BISSELL:

Q. Where do you reside, Mr. Bulkley?
A. Leadville.
Q. What is your business?
A. I am a civil and mining engineer.
Q. Were you ever at the Paymaster claim?
A. Yes, sir.
Q. Did you assist in measuring the drift run off from the
180 shaft from that claim?
A. I did.
Q. When?
A. September fifteenth, 1881.
Q. What did you find to be the length of that drift?
A. Thirteen feet. I am not quite sure whether that was the whole drift or a part of it.

Cross-examination by Mr. WHEAT:

Q. When was that measurement made, do you say?
A. September fifteenth, 1881.
Q. How long do you say the drift was?
A. Thirteen feet to the point measured from. I am not sure whether that was the whole drift I assisted in measuring. I held one end of the tape and Captain Holbrook the other.
Q. You don't know whether you measured the whole length of the drift or a portion?
A. He held the end inside, so I don't know.
Q. Did you see where he held his end inside?
A. No, sir.
Q. Were you inside of the drift?
A. No, sir.
Q. You don't know whether you helped to measure the whole length of that drift or a portion of it?
A. I do not, sir.

J. J. HOLBROOK, recalled on the part of the plaintiffs, testified as follows:

Direct examination by Mr. CAVENDER:

Q. Mr. Holbrook, you are a miner?
A. Yes, sir.

Q. How long have you been a miner?

A. For over twenty-three years, mining and prospecting and interested in mining.

Q. Where have you prospected and mined?

A. I prospected and mined from Wyoming to New Mexico and Arizona.

Q. And Colorado?

181 A. Yes, sir; about fifteen years of that time in Colorado.

Q. How long have you been in the Monarch district, in Chaffee county?

A. Over three years.

Q. When did you first go there?

A. In the early part of September, 1879.

Q. Have you been in this drift in controversy?

A. Yes, sir.

Q. That was run from the forty-foot shaft?

A. Yes, sir.

Q. When were you there first?

A. I was there first on the twelfth of August, of 1881, in company with Mr. Boyd.

Q. Were you ever there with Mr. Fred. Bulkley and Mr. Smith?

A. I was there in company with Mr. Bulkley and found Mr. Smith down in the drift.

Q. Is Mr. Smith, the gentleman you refer to, the gentleman who testified for the defendants?

A. Benjamin F. Smith.

Q. Did Mr. Smith point out to you and Mr. Bulkley the termination of this drift as it was left by him as a workman?

A. No, sir; Mr. Bulkley wasn't there at that time; Mr. Smith wasn't in there at the time Mr. Bulkley and I measured it.

Q. Did he point it out to you?

A. He pointed it out to me; I went down into the shaft while Mr. Boyd was on top at the windlass. Mr. Boyd sat on the windlass platform and I went down in it, knowing Mr. Smith was there.

Q. Did Mr. Smith point out to you where that drift—where they had ceased working on that drift?

A. Yes, sir; I asked him to.

Q. And he pointed it out to you?

A. Yes, sir.

Q. Could you discover readily where it was?

A. I could discover by the difference in the timbering.

182 Defendants' counsel object to the mode of examining and the last answer, because the same is hearsay, and that Mr. Smith is not a party to the suit; which objection the court overruled, and to which ruling of the court the defendants, by their counsel, then and there duly excepted.

Q. Now, you say there were old timbers and new timbers in that drift?

A. Yes, sir; it showed a little difference.

Q. And where you were shown was to the end of the old timbering?

A. Yes, sir.

Q. Did you make any measurement of that with anybody else's assistance?

A. No, sir; I merely stepped it off—four long steps—so as to satisfy myself of what it was to its conjunction with the shaft.

Q. Didn't you afterwards measure it with Mr. Bulkley?

A. I did; yes, sir, afterwards.

Q. You first stepped it off and then you afterwards measured it with Mr. Bulkley?

A. Yes, sir.

Q. Did you use a tape line?

A. Yes, sir; with a tape line with Mr. Bulkley.

Q. Now, then, what part of the measurement did you do?

A. I held one end of the line and Mr. Bulkley held the other, the reel that the tape is held in, at the collar of the windlass, and the thirteen feet that he has reference to was from the collar of the windlass to where the top of the drift is; it is not a drift; it is an incline, to the top of that incline, and then passing on in we found it eighteen feet to the end of their work.

183 Q. And how far was it to the end of the old timber, to where the drift started in?

A. I don't think we measured that at that time. I don't distinctly remember about it, though.

Q. What distance did you make it from where that incline started in from the shaft to the end of the old timbers?

A. I am trying to think or remember whether I made a subtraction off that tape line, but I think I did at that point, and I think I found it to that mark about twelve feet. I don't remember exactly about that part of the measurement.

Q. It was about twelve feet?

A. Yes, sir; it was about twelve feet.

Q. Mr. Holbrook, considering the locality, the price of labor, and all the matters that are taken into consideration when work of that sort is done, what, in your judgment, is a fair value for making that drift and running it as you found it, timbered and all, per foot?

A. Well, I should consider it a fair contract on my part, if I was contracting to have the work done, ten dollars a foot. I would consider that fair, in taking into consideration the money that was expended on as many as ten or twelve different claims that I know of there, which I have worked on myself and contracted on, from the Monarch mine clear to the top of that mountain. I never got anything less than eight dollars a foot, and had to pay as high as twelve; taking all those things into consideration, and further up the mountain I should consider it was ten dollars a foot to do it; that is what I did consider it worth.

Q. You consider it worth now ten dollars a foot?

A. Yes, sir; to do ten or twelve feet of work—that is, I wouldn't take it for less to-day, to continue it right along, at less than that.

Q. If you had to continue that work right on, with what
184 you see there now, you wouldn't take it to-day at less than ten dollars a foot?

A. I might take it at eight, but I don't think I would take it less than that, though. I would want, generally speaking, ten dollars a foot to undertake to take a contract up there; it would depend upon how hard up I was.

Q. I will ask you this, whether or not, taking the work as it stands and its location and the price for which such work is done, from eight to ten dollars a foot would be a fair price for the doing of such work?

A. I would consider to-day eight to ten dollars a very fair contract, a very fair contract price for the work—that is, as contracting to have it done; if I owned the claim, it was fair.

Q. Do you recognize that memorandum, Mr. Holbrook (handing same to witness)?

A. Yes, sir; that is my writing.

Q. Now, what is that?

A. It is a memorandum that I made on the evening of the day I was at the claim.

Q. Just refresh your recollection as to the distances, the size, etc.

A. I don't think it needs any refreshment; yes, sir; now, I understand it; well, it is as I have always testified.

Q. This refreshes your recollection?

A. Yes, sir.

Q. I want to ask you from this how wide that was in the bottom, in the clear. Just look at that memoranda—I want you to refresh your memory—and tell the jury the width of that drift in the clear, in the bottom.

A. There is nothing in there with reference to that; I made no such notation. I think the notes there refer to the size of the shaft—four by seven. I know what the size of the incline was, if that is what you mean.

185 Q. What was the size of the incline?

A. The incline was—just let me have that a minute; there is a point where I can refresh my memory on—I think it was four by six, but I am not certain, including timbers.

Cross-examination by Mr. SHARMAN:

Q. Mr. Holbrook, your estimate is based upon what you term a contract price, is it not?

A. Yes, sir; based upon what I would be willing to do the work for.

Q. Taking upon yourself as a contractor the hazard of different kinds of material to go through?

A. Yes, sir.

Q. That would largely affect your estimate as to what it was worth, wouldn't it?

A. Yes, sir; knowing the character of the rock that was first started in, it would.

Q. And having to go a certain distance—a certain length?
A. Yes, sir.
Q. Then you would expect to be protected in the hazard that you might assume in running the drift on a contract; is that what I understand you?
A. Undoubtedly; yes, sir,
Q. If, however, the same work could be done, and there was no requirement as to the length, the number of feet to be run—nothing specified in any contract but simply as to the amount of work done—what would you base an estimate upon as to whether the price was reasonable or not? In other words, if this work could be done in one week, at three dollars and a half a day, would you consider that it was worth ten dollars a foot to do it?
A. I wouldn't know that it could be done in one week.
Q. If you didn't have to ascertain until the work was done?
A. I wouldn't take it in that way at all; no, sir.
186 Q. Your estimate is entirely based upon what you would take a contract not knowing what you would meet?
A. I base it upon what I knew contract work had resulted in for a year in that camp.
Q. The contractor taking the hazard of what kind of rock he had to go through?
A. ——

Redirect examination by Mr. PATTERSON:

Q. Is not the great majority of assessment work done that way, by contract, in that locality?
A. Yes, sir; I might say four out of five of them are done by contract.
Q. You undertake to do so much work under a contract for a hundred dollars; then the miners consider they have done their work?
A. They have heretofore considered they have complied with the law. I know that.

Recross-examination by Mr. SHARMAN:

Q. You mean when they take a contract to go a certain number of feet?
A. When they paid a hundred dollars to do a certain amount of work.

W. J. FINNEGAN, recalled on the part of the plaintiffs, testified as follows:

Direct examination by Mr. PATTERSON:

Q. You are a miner, Mr. Finnegan?
A. Yes, sir.
Q. How long have you mined altogether?
A. In this district? I have been there eight years.

Q. Mr. Finnegan, when were you in the Monarch mining district?

A. Last?

187 Q. What period of time were you there?

A. In 1878, in the earliest days of Monarch, because the claims were conveyed in September. I went in there in 1878.

Q. Have you been mining as a practical miner, doing contract work and everything of that sort, up there?

A. Yes, sir; I have sold forty-three claims and interests in them and found them; I come pretty near——

Q. Were you ever in this shaft or what was the Paymaster shaft?

A. Yes, sir; I was in the shaft.

Q. Were you ever in this drift that is in controversy?

A. No, sir.

Q. When were you in the shaft?

A. I was in the shaft about—I think I was there three or four weeks before the work was completed, previous to the surveying of it.

Q. Do you know the character of the rock through which the shaft was sunk?

A. Yes, sir.

Q. Do you know the character of the rock where the vein takes off the shaft about twelve or thirteen feet from the surface?

A. It was near about ten feet six inches, I think we called it, when I measured it, I think, at that point.

Q. You know the character of that rock?

A. Yes, sir.

Q. I will ask you to state, taking into consideration the character of the rock, the location of the ground, the value of labor and everything of that sort, what would be a fair price per foot for runniug a drift of that vein, say, in a distance of twelve or thirteen feet?

A. Commencing at the bottom of the shaft?

Q. Commencing at a point eleven or twelve feet from the surface in the shaft and running on the vein at that point?

188 A. Well, I never run ten or twelve feet in my life for less than a hundred dollars; I think it is worth a hundred dollars for any prospector—a hundred dollars; not less than that.

Q. Are you familiar with what work of that sort is done for under contracts in the camp?

A. Well, some; yes, in the camp in that neighborhood; not exactly right close to that line.

Q. But right in that neighborhood?

Objected to by defendants' counsel because immaterial. Objection sustained.

Cross-examination by Mr. SHARMAN:

Q. You say you never were in this drift, Mr. Finnigan?

A. I never was in the drift that is now in controversy; I never was in there.

Q. The last time you were in the shaft you didn't go down to the distance the drift runs off?
A. Not quite to the drift, from the testimony.
Q. So your estimate is based entirely upon the character of the ground that you saw?
A. The formation and character of that rock and what I saw while in there.
Q. Down ten feet?
A. I have been in deeper holes than that there.
Q. I am talking about that hole.
A. That hole was ten feet six inches when I was in there.
Q. All you know about where the drift run off is by hearsay?
A. I know nothing particularly about the drift at all.

JOHN HURLBURT, recalled on the part of the plaintiffs, testified as follows:

189 Direct examination by Mr. PATTERSON:

Q. You are one of the owners of the Paymaster claim, I believe?
A. Yes, sir.
Q. Mr. Hurlburt, did you have this work done for the company in 1880?
A. Yes, sir.
Q. The assessment work on the claim?
A. All of it; yes, sir.
Q. Who did you contract with to do this work?
A. With Thomas White.
Q. Did you pay for this work?
A. Yes, sir.
Q. How much did you pay?
A. A hundred dollars.

Objected to by defendants' counsel, which objection was by the court overruled; to which defendants then and there excepted at the time.

Q. In money?
A. Yes, sir; in a check.
Q. That check was cashed?
A. Yes, sir; it was.

And thereupon the plaintiffs rested their case.
The foregoing was all the evidence introduced either by plaintiffs or defendants at the trial of this cause.

And thereupon the court instructed the jury as follows:

The jury are instructed upon the law of this case as follows:

1st. To constitute a valid location of a mining claim under the law the locator must first discover a vein, lode, ledge, or deposit of rock in place carrying gold, silver, lead, or other valuable deposit; post at the point of discovery a plain sign or notice containing name of lode, name of locator, & date of location; within 60 days

190 after the date of such discovery he must sink a discovery shaft thereon to the depth of at least 10 feet below the lowest part of the rim thereof at the surface, or deeper, if necessary, to disclose the vein therein. Before filing his location certificate hereinafter mentioned he must mark the boundaries of the claim by six substantial posts hewed or marked on the side in towards the same, to wit, one at each corner and one at the center of each side lines thereof; and within three months from the date of discovery aforesaid he must file with the clerk & recorder of the county in which the claim is situated a location certificate containing the name of the lode, name of locator, date of location, the number of feet in length claimed on each side of the discovery shaft, general course of the lode as near as may be, and such description as will serve to identify the claim with reasonable certainty: Provided, that if the location certificate aforesaid be filed before the discovery shaft be sunk to the requisite depth, and the locator afterwards and before any third person or persons acquire any rights or interests in the premises, completes such location work, it is in law the same as though performed in the order & within the time above specified. Given: J. C. Helm.

2d. If you find from the evidence that plaintiffs or their grantors made a valid location of the premises in controversy by a full compliance with the law as aforesaid, and that during the year 1880 they performed or caused to be performed thereon $100 worth of labor, or placed thereon improvements of that value, or placed
191 thereon work & improvements aggregating $100 in value you will find for the plaintiffs. Given: J. C. Helm.

3d. One branch of the defence in this case is that the plaintiffs have abandoned their rights under their original location & have forfeited them by reason of the failure to perform the annual assessment work required by the statute; and you are further instructed that the burden of establishing the abandonment is upon the defendants, the rule being that where a party insists upon a forfeiture by abandonment or otherwise, & relies thereon to built up a right in himself to the thing forfeited he is bound to establish the facts upon which his asserted right depends. Given: J. C. Helm.

4th. You are instructed that if the plaintiffs failed to perform one hundred dollars' worth of work or make improvements of that value upon the premises in controversy in 1880 and did not resume work thereon before the defendants entered upon & acquired rights in the same, if you find that they did acquire such rights, then any work and labor done or improvements made by the plaintiffs after entry by the defendants thereon would not operate to reinvest the plaintiffs with a right to the possession thereof, and you should find for the defendants. Given: J. C. Helm.

5th. You are instructed that the question whether the required annual labor or improvements of the value of one hundred dollars was performed or made on the Paymaster claim in A. D.
192 1880 is to be determined by the actual value of the labor or improvements, considering the reasonable cost of labor and materials in that section, and at that time, and not by what, if anything, the plaintiffs paid to Thomas White therefor; an affidavit

that such assessment work was done is only *prima facie* evidence of that fact and may be overcome by oral testimony to the contrary.

6th. If you find for the plaintiff, you will answer in writing the following question:

"What was the actual value at the time when done of the labor performed and improvements made on the Paymaster claim during the year 1880?" Given: J. C. Helm.

7th. If you believe from the evidence that plaintiffs or their grantors failed to fully comply with the law as given in the first foregoing instruction, in making their original location of the Paymaster lode, or if you believe from the evidence that they failed during the year 1880 to place thereon work and improvements of the value of $100, and did not subsequently and before defendants took possession and begun making a location thereof, re-enter thereon and begin the development thereof, then, in either event, you will find for the defendants. Given: J. C. Helm.

To the giving of instructions number- 1st, 2d, 3d, 4th, 5th, 6th, 7th the defendants, by their counsel, then and there duly excepted.

And thereupon defendants' counsel asked the court to instruct the jury on the part of the defendants as follows, but which
193 the court refused to do:

1st. The jury are instructed that the locator of a mining claim in the Monarch mining district, situated in the county of Chaffee, State of Colorado, is only entitled to claim one hundred and fifty feet on either side of the centre of the vein of mineral which he claims to have discovered, and he must state in his certificate of location the number of feet so claimed on each side of the centre of such vein, and if the jury find that the certificate of location introduced by plaintiffs in this case did not state the number of feet claimed on each side of the centre of such vein, or that the discovery shaft of the Paymaster claim was, in fact, at a point more than one hundred and fifty feet from one of the side boundaries of the said claim, then they must find for the defendants, if they further find that defendants subsequently made a valid location of the Monticello claim before any further acts were done by the locator of the Paymaster or his grantors to amend or perfect such location certificate or location. Refused: J. C. Helm.

2d. That the jury should find for the defendants, the evidence not being sufficient to sustain a verdict for the plaintiffs. Refused: J. C. Helm.

To which ruling of the court in refusing to give said instructions to the jury the defendants, by their counsel, then and there duly excepted.

And thereupon the jury retired in charge of a sworn officer to consider of their verdict, and thereafter, on the same day,
194 returned unto court their verdict, which is in the words and figures as follows:

BOYD *et al. vs.* QUIMBY *et al.*

We, the jury, find for the plaintiffs, and that they are entitled to

the possession of the premises in controversy, and we further find that the work done in 1880 was worth $100.00.

R. W. ANDERSON, *Foreman*

To which verdict the defendants, W. M. Quimby and J. S. Boon, by their counsel, then and there duly excepted and gave notice of a motion for a new trial herein.

And thereupon defendants' counsel made and filed a motion for a judgment herein on ther behalf, notwithstanding the verdict, which motion is as follows:

STATE OF COLORADO, } *ss:*
County of El Paso, }

In the District Court of the Fourth Judicial District in and for the County of El Paso, State of Colorado. November Term, 1882.

J. SCOTT BOYD *et al.*, Plaintiffs,
vs.
W. M. QUIMBY, J. S. BOON, and JACOB WELCH, Defendants. } No. 823.

Now come the defendants, W. M. Quimby and John S. Boon, and move the court to enter judgment in favor of said defendants, notwithstanding the verdict, for the reason that upon the record plaintiffs are not entitled to recover; and

Second. For the reason that the plaintiffs failed to prove a sufficient case for the jury.

W. J. SHARMAN, with whom is
J. L. WILLIAMS,
Att'ys for said Defendants.

195 Which said motion the court overruled; to which ruling of the court said defendants then and there duly excepted.

And thereupon, upon the 20th day of November, A. D. 1882, said defendants made & filed a motion for a new trial and to vacate said verdict; which said motion is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of El Paso, }

In the District Court of the 4th Judicial District in and for the County of El Paso, State of Colorado. November Term, 1882.

J. SCOTT BOYD *et al.*, Plaintiffs,
vs.
W. M. QUIMBY, J. S. BOON, and S. JACOB WELCH, Defendants. } No. 823.

And now come said defendants, W. M. Quimby and J. S. Boon, two of said defendants, and move the court to vacate and set aside

the verdict heretofore rendered at this November term, 1882, in the said above-entitled action and to grant said defendants a new trial herein for the following causes, materially affecting the substantial rights of said parties, to wit:

1st. For and because of the insufficiency of the evidence to justify the verdict.

2nd. Because of error in law occurring at the trial and excepted to at the time by the said defendants.

3d. Because the said verdict is against the law.

4th. Because the said verdict is against the evidence.

3d. Because the said verdict is against the law and the evidence.

4th. Because the court erred in overruling said defendants' motion for for a nonsuit, which was excepted — by said defend-

196 ants at the time.

5. Because of error occurring at the trial and excepted to by said defendants at the time, in this, that the court erred in giving, on its own motion, instructions numbered 1st, 2d, 3d, 4th, 5th, 6th, & 7th; that the court erred in refusing the instructions asked by the defendants aforesaid, numbered 1st and 2d; that the court erred in admitting irrelevant, incompetent, and improper testimony offered by the plaintiffs at the trial and against the objections of said defendants; that the court erred in rejecting relevant, competent, and proper testimony offered by the said defendants at the trial.

6th. Because the jury disobeyed the instructions of the court.

W. J. SHARMAN, with whom is
J. L. WILLIAMS,
Att'ys for said Defendants.

Which said motion for a new trial the court overruled, and to which ruling of the court said defendants, by their counsel, then and — duly excepted.

Forasmuch as the matters and things hereinbefore set forth do not fully appear of record in the above-entitled cause, the defendants beg leave to tender this their bill of exceptions, and pray that the court may sign and seal the same, which is accordingly done this 6th day of January, A. D. 1883.

[SEAL.] JOSEPH C. HELM, *Judge.*

No objections to signing this bill of exceptions.

T. M PATTERSON.

Said bill of ex. filed in dist. c't Jan'y 8, 1883.

J. E. McINTYRE, *Clerk.*

197 Be it remembered that heretofore and on the 23d day of December there was filed in said dist. court, in words and figures, the following appeal bond:

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court of the Fourth Judicial District in and for the County of El Paso, State of Colorado.

J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. F. Magruder, Plaintiffs,

vs.

W. M. QUIMBY, J. S. BOON, and S. JACOB WELSH, Defendants.

Know all men by these presents that we, W. M. Quimby and J. S. Boon, as principals, and James Streeter, H. C. Boon, G. R. Fisher, and C. F. Lee, as sureties, are held and firmly bound unto J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, Alexander H. Rice, William Roberts, John P. Risque, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., Alex. F. Magruder, plaintiffs in the above-entitled action, in the penal sum of one thousand dollars; for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, and administrators.

Dated, signed, and sealed, this 4th day of December, A. D. 1882.

The condition of the above undertaking is such, however, that whereas the said above-named plaintiffs did, on the 20th day of November, A. D. 1882, to wit, at the November term, A. D.
198 1882, of the said district court of the 4th judicial district in and for the county of El Paso, State of Colorado, recover a judgment against the said above-bounden W. M. Quimby and J. S. Boon for the possession of certain lands and premises in the complaint of plaintiffs in said action described, together with costs of said action; and whereas the said above-bounden W. M. Quimby and J. S. Boon have appealed to the Supreme Court of the State of Colorado from the said judgment so rendered as aforesaid: Now, therefore, —, the said above-bounden principals and sureties shall perform and pay the judgment in said cause in case the same shall be affirmed, together with costs, interest, and damages, and shall also duly prosecute the said appeal, then this obligation shall be null and void; otherwise to remain in full force and effect.

W. M. QUIMBY,
By A. W. HARRINGTON, [SEAL.]
Attorney-in-Fact.

J. S. BOON, [SEAL.]
JAMES STREETER. [SEAL.]
H. C. BOON. [SEAL.]
G. R. FISHER. [SEAL.]
C. F. LEE. [SEAL.]

Endorsed: Filed and approved Dec. 23d, '82.

I, J. E. McIntyre, clerk of the district court of El Paso county, in the State aforesaid, do hereby certify the above and foregoing to be

a true, perfect, and complete copy of summons, injunction, writ, complaint, answer, supplemental answer, and all orders made
199 in El Paso dist. c't, bill of ex., and appeal bond in a certain cause heretofore depending in said court, on the — side thereof, wherein J. Scott Boyd *et al.* were pl'ffs and W. M. Quimby *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Colorado Springs, this 20th day of January, A. D. 1883.

[SEAL.] J. E. McINTYRE, *Clerk.*

Assignment of Errors.

In the Supreme Court of the State of Colorado.

J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULbert, John P. Risque, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Hanson W. Hendricks, Henry D. Cook, Jr,. Alexander F. Magruder, Appellees,

vs.

W. M. QUIMBY and JOHN S. BOON, Appellants.

Now come the said appellants, W. M. Quimby and John S. Boon, by W. J. Sharman, their attorney, and say that there is manifest error in the record and proceedings in the above-entitled cause, in this, to wit:

I. The court erred in admitting, against objections of said W. M. Quimby and John S. Boone, defendants in the court below, in evidence, a certain paper designated as "Plaintiffs' Exhibit A." Folios 133 to 136, inclusive.

II. The court erred in admitting in evidence, against the
200 objection of said defendants, a certain paper designated "Plaintiffs' Exhibit Y." Folios 151 to 163, inclusive.

III. The court erred in admitting in evidence, against the objections of said defendants, "Plaintiffs' Exhibit Z." Folios 164 to 177, inclusive.

IV. The court erred in admitting in evidence, against the objection of said defendants, "Plaintiffs' Exhibit D D." Folios 189 to 201, inclusive.

V. The court erred in admitting in evidence, against the objections of said defendants, "Plaintiffs' Exhibit E E." Folios 202 to 214, inclusive.

VI. The court erred in admitting in evidence, against the objection of said defendants, "Plaintiffs' Exhibit A A." Folios 178 to 189, inclusive.

VII. The court erred in admitting in evidence, against the said defendants' objections, "Plaintiffs' Exhibit F F." Folios 215 to 227, inclusive.

VIII. The court erred in admitting in evidence, against the objection of said defendants, "Plaintiffs' Exhibit Cert'f., &c." Folios 228 to 234, inclusive.

IX. The court erred in admitting in evidence, against the objection of said defendants, "Plaintiffs' Exhibit Certif., &c." Folios 234 to 236, inclusive.

X. The court erred in admitting in evidence, against the objection of said defendants, "Plaintiffs' Exhibit Certif., &c." Folios 236 to 242, inclusive.

XI. The court erred in overruling said defendants' motion
201 for a nonsuit at the close of plaintiffs' case. Folios 256 to 257, inclusive.

XII. The court erred in overruling the said defendants' objections to the sufficiency of plaintiffs' pleadings and proofs. Folio 258.

XIII. The court erred in overruling the said defendants' objection to the following questions and answers:

"Q. Did you pay for this work?

"A. Yes, sir.

"Q. How much did you pay?

"A. A hundred dollars."

XIV. The court erred in giving, of its own motion, so much of instruction No. 1 as follows:

"Provided, That if the location certificate aforesaid be filed before the discovery shaft be sunk to the requisite depth and the locator afterwards, and before any third person or persons acquire any rights or interests in the premises, completes such location work, it is in law the same as though performed in the order and within the time specified." Folio 623.

XV. The court erred in charging the jury as follows:

"If you find from the evidence that plaintiffs or their grantors made a valid location of the premises in controversy by a full compliance with the law as aforesaid, and that during the year 1880 they performed or caused to be performed thereon $100 worth of labor or placed thereon improvements of that value, or placed thereon work and improvements aggregating $100 in value, you will find for the plaintiffs." Folio 624.

202 XVI. The court erred in charging the jury as follows:

"One branch of the defence in this case is that the plaintiffs have abandoned their rights under their original location and have forfeited them by reason of the failure to perform the annual assessment work required by the statute, and you are further instructed that the burden of establishing the abondonment is upon the defendants, the rule being that when a party insists upon a forfeiture, by abandonment or otherwise, and relies thereon to build up a right in himself to the thing forfeited, he is bound to establish the facts upon which his asserted rights depends." Folio 625, 626.

XVII. The court erred in refusing to give following instructions asked by said defendants:

"1st. The jury are instructed that the locator of a mining claim in the Monarch mining district, situated in the county of Chaffee, State of Colorado, is only entitled to claim one hundred and fifty feet on either side of the center of the vein of mineral which he claims to have discovered; he must state in his certificate of location the number of feet so claimed on each side of the center of such

vein, and if the jury find that the certificate of location introduced by plaintiffs in this case did not state the number of feet claimed on each side of the center of such vein, or that the discovery shaft of the "Paymaster" claim was in fact at a point more than one hundred and fifty feet from one of the side boundaries of the said claim, then they must find for the defendants, if they further find
203 that defendants subsequently made a valid location of the Monticello claim before any further acts were done by the locator of the "Paymaster" or his grantors to amend or perfect such location certificate or location.

"2nd. That the jury should find for the defendants, the evidence not being sufficient to sustain a verdict for the plaintiffs." Folios 633 to 635, inclusive.

XVIII. The court erred in overruling the motion of said defendants for judgment notwithstanding the verdict. Folio 640.

XIX. The court erred in overruling the motion of said defendants to vacate and set aside the verdict and to grant said defendants a new trial. Folios 643 to 647, inclusive.

W. J. SHARMAN,
Att'y for Def'ts, W. M. Quimby & John S. Boon.

Endorsed: 1160. In supreme court. J. Scott Boyd *et al.*, appellees, *vs.* W. M. Quimby *et al.*, appellants. Assignment of errors. Filed in supreme court 4, 3, 1883. James A. Miller, clerk. W. J. Sharman, att'y for app'l'ts.

And afterwards and on, to wit, the 18th day of May, 1883, come said appellees, by their attorneys, Markham, Patterson and Thomas, and file herein their joinder in error as follows, to wit:

204 In the Supreme Court of the State of Colorado.

W. M. QUIMBY *et al.*, Appellants,
vs.
J. SCOTT BOYD *et al.*, Appellees.

Come now the said appellees, by Markham, Patterson & Thomas, their attorneys, and say that there is no error manifest in the record of said cause, and they especially deny that there is any error as alleged by the said appellants.

MARKHAM, PATTERSON & THOMAS,
Atty's for Appellees.

Endorsed: 1160. Supreme court. W. M. Quimby *et al. vs.* J. Scott Boyd *et al.* Joinder in error. Filed in supreme court May 18, 1883. James A. Miller, clerk. Markham, Patterson & Thomas, atty's for appellees.

And thereafter and upon, to wit, the 20th day of March, A. D. 1885, the same being one of the judicial days of the regular December, A. D. 1884, term of said court—present, Honorable William E. Beck, chief justice; Honorable Wilbur F. Stone, associate justice; Honorable Joseph C. Helm, associate justice; George H. Graham,

Esq., sheriff of Arapahoe county, by Matthew Adams, bailiff; James A. Miller, clerk—the judgment of said supreme court was
205 entered of record in said cause in the words and figures as follows, to wit:

W. M. QUIMBY and J. S. BOON, Appellants,

vs.

J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Hanson W. Hendricks, Henry D. Cook, Jr., and Alexander F. Magruder, Appellees.

Appeal from district court of El Paso county.

At this day, this cause coming on to be heard, as well upon the transcript of proceedings and judgment had in said district court in and for the county of El Paso, as also upon the matters assigned as error herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is no error in the proceedings and judgment aforesaid in said district court, it is therefore considered and adjudged by the court that the judgment aforesaid of said district court be, and the same is hereby, affirmed and remain in full force and effect, and that this cause be remanded to said district court for such other and further proceedings according to law as shall be necessary to the final execution of the judgment of said district court in the cause, notwithstanding the said appeal.

It is further ordered by the court that said appellees do have
206 and recover of and from said appellants their costs in this behalf extended, to be taxed, and that they have execution therefor, and let the opinion of the court filed herein be recorded.

And afterwards and upon, to wit, June 12th, A. D. 1885, the same being one of the judicial days of the regular April, A. D. 1885, term of said court—present, Honorable William E. Beck, chief justice; Honorable Wilbur F. Stone, associate justice; Honorable Joseph C. Helm, associate justice; George H. Graham, Esq., sheriff of Arapahoe county, by Matthew Adams, bailiff; James A. Miller, clerk—the judgment of said supreme court upon the petition of said appellants for a rehearing herein was entered of record in said cause in the words and figures as follows, to wit:

W. M. QUIMBY and J. S. BOON, Appellants,

vs.

J. SCOTT BOYD, Jr., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Hanson W. Hendricks, Henry D. Cook, Jr., and Alexander F. Magruder, Appellees.

Appeal from district court of El Paso county.

At this day, this cause coming on to be heard upon the petition

of said appellants for a rehearing herein, and upon con-
207 sideration thereof, and being now fully advised in the premises, it is ordered by the court that said petition be, and is hereby, denied. And let the opinion of the court filed herein be recorded.

And upon, to wit, the 17th day of June, A. D. 1885, the same being one of the juridical days of the regular April, A. D. 1885, term of said court—present, Honorable William E. Beck, chief justice; Honorable Wilbur F. Stone, associate justice; Honorable Joseph C. Helm, associate justice; George H. Graham, Esq., sheriff of Arapahoe county, by Matthew Adams, bailiff; James A. Miller, clerk—the following further proceedings were had and entered of record in said cause, to wit:

W. M. QUIMBY *et al.*, Appellants,
vs.
J. SCOTT BOYD *et al.*, Appellees.

Appeal from district court of El Paso county.

At this day comes appellants, by W. J. Sharman, Esq., their attorney, and say to the court that they will at a short day sue out a writ of error from the Supreme Court of the United States to this court in this cause, and will also apply to the chief justice hereof for a citation to said appellees as defendants in error.

And afterwards and on, to wit, July 18th, A. D. 1885, come the said appellants, by their attorney, W. J. Sharman, Esq., and
208 file in the clerk's office of said supreme court their complaint for writ of error, which, with the allowance of said writ of error endorsed thereon, is in the following words and figures, to wit:

In the Supreme Court of State of Colorado.

W. M. QUIMBY *et al.*, Appellants,
vs.
J. SCOTT BOYD *et al.*, Appellees.

Appeal from district court of El Paso county, State of Colorado.

To the Honorable Wilbur F. Stone, acting chief justice of the supreme court of Colorado:

Now come W. M. Quimby and J. S. Boon, appellants, by W. J. Sharman, their attorney, and complain that in the record — proceedings and also in the rendition of a judgment in a suit between W. M. Quimby and J. S. Boon, appellants, and J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder, appellees, in the supreme court of the State of Colorado, being the highest court of law of the said State in which a decision could be had in said suit, and in which a final

judgment was rendered against the said appellants on the 12th day of June, A. D. 1885, in said suit, wherein a title, right, and privilege and certain titles, rights, and privileges were specially set up and claimed under a certain statute and certain statutes of the United States, to wit, sections 2320, 2324 of the Revised Statutes of the United States and other statutes additional and amendatory thereto, and
209 the decision was against the title, right, and privilege and the titles, rights, and privileges specially set up and claimed, all which appear in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said W. M. Quimby and J. S. Boon.

Wherefore they pray that a writ of error be allowed, as well as such other process as may cause the same to be corrected by the Supreme Court of the United States.

W. J. SHARMAN,
Att'y for W. M. Quimby & J. S. Boon.

Allowed this 17th day of August, A. D. 1885.

WILBUR F. STONE,
Acting Chief Justice of the Supreme Court of the State of Colorado, Chief Justice William E. Beck being absent from the State.

Endorsed: 1160. In the supreme court. W. M. Quimby *et al.*, appellants, *vs.* J. Scott Boyd *et al.*, appellees. Complaint for writ of error to Supreme Court U. S. Filed in supreme court July 18, 1885. James A. Miller, clerk. W. J. Sharman, att'y for appellants.

And thereafter and on, to wit, September 23d, 1885, come again said appellants, by their attorney as aforesaid, and file in the said clerk's office their cost bond and power of attorney attached thereto, with the approval of said bond endorsed thereon, which is in the following words & figures, to wit:

Know all men by these presents that whereas in a certain
210 suit in the supreme court of the State of Colorado, wherein W. M. Quimby and the undersigned were appellants and J. Scott Boyd, Jr., *et al.*, were appellees, a writ of error has been sued out from the Supreme Court of the United States to the said supreme court of the State of Colorado for the correction of manifest error in the record and judgment in said suit, rendered by the said supreme court of the State of Colorado: Now, therefore, I do hereby make, constitute, and appoint W. J. Sharman my true and lawful attorney, for me and in my name, place, and stead to sign and seal such bond or bonds as may be required to effect a supersedeas of the said judgment complained of, and to answer all damages and costs if the plea of the appellants, now plaintiffs in error, shall fail in the said Supreme Court of the United States, and any and all bonds necessary in the premises to make effective the said supersedeas and writ of error at any stage of the proceedings in the said cause, giving and granting to my said attorney full power and authority to act in the premises as fully and completely as I might or could do if personally present.

JOHN S. BOON. [SEAL.]

STATE OF COLORADO, } ss:
County of C., }

Personally appeared before me, the undersigned, a notary public within and for the county of Chaffee, State of Colorado, J. S. Boon, to me personally known to be the same person who signed and sealed the above and foregoing power of attorney, and acknowledged that he executed the same voluntarily and for the purposes therein expressed.

211 [NOTARIAL SEAL.] A. H. WELLS,
Notary Public.

Signed, sealed, and delivered this twenty-ninth day of August, A. D. 1885.

A. H. WELLS,
Notary Public.

Know all men by these presents that we, W. M. Quimby and J. S. Boon, as principals, and Munroe T. Quimby and Edward G. Pearson, all of Boston, Mass., as sureties, are held and firmly bound unto J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulbert, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph W. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alexander Magruder in the penal sum of two hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this seventeenth day of August, A. D. 1885. The conditions of this obligation is such that whereas the said J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, John Hulburt, John P. Risque, Alexander H. Rice, William Roberts, Kate Magruder, Joseph H. Borden, John W. Carson, Harmon W. Hendricks, Henry D. Cook, Jr., and Alex. Magruder did, on the twentieth day of March, one thousand eight hundred and eighty-five, at a term of the supreme court of Colorado, then being holden within and for the State of Colorado, obtained a judgment against the above-bounden W. M. Quimby and J. S. Boon, affirming the judgment of the district court of El Paso county, in said State, for the recovery
212 of the possession of certain real estate in the said judgment, more particularly described of record in said district court, as also in the transcript of record filed in the said cause in said supreme court of the State of Colorado, and to reverse which said judgment of affirmance the said W. M. Quimby and J. S. Boon have sued out a writ of error from the Supreme Court of the United States to said supreme court of the State of Colorado:

Now, therefore, if the said W. M. Quimby and J. S. Boon shall duly prosecute said writ of error to effect and without delay, and if they fail to make their plea good shall answer all damages and costs,

then the above obligation to be void; otherwise to remain in full force and effect.

WAREHAM M. QUIMBY. [SEAL.]
JOHN S. BOON,
By W. J. SHARMAN, [SEAL.]
His Att'y-in-Fact.
MONROE T. QUIMBY. [SEAL.]
EDW'D G. PEARSON. [SEAL.]

STATE OF MASSACHUSETTS, *Suffolk County,* } *ss:*

Personally appeared this day before me, a notary public within and for the county of Suffolk and State aforesaid, Munroe T. Quimby and Edward G. Pearson, sureties on the foregoing bond, who, being duly sworn, deposed and said that each of them is seized and possessed in his own right, over and above all his just debts and liabilities, in property not exempt by law from levy and sale under execution, of a clear, unincumbered estate of the value of two thousand dollars within the State of Massachusetts.

——— ———.
——— ———.

213 Subscribed and sworn to before me this nineteenth day of September, A. D. 1885.

[NOTARIAL SEAL.] STEPHEN H. TYNG,
Notary Public.

Approved as of Aug. 17th, 1885.

WILBUR F. STONE,
Judge & Acting Chief Justice of Sup. Court of Colorado.

Endorsed: 1160. Quimby *et al.*, pl'ffs in error, *v.* Boyd *et al.*, def'ts in error. Cost bond & power of att'y. Filed in supreme court Sep. 23, 1885. James A. Miller, clerk.

And thereafter and on, to wit, October 5th, A. D. 1885, come again said appellants, by their attorney as aforesaid, and file in the said clerk's office their bill of exceptions, which is in words and figures following, to wit:

STATE OF COLORADO, *ss:*

In the Supreme Court. April Term, A. D. 1885.

W. M. QUIMBY *et al.*, Appellants,
vs.
J. Scott Boyd *et al.*, Appellees.

Be it remembered that on the 20th day of March, A. D. 1885, at the above term, this cause coming on to be heard on the
214 assignment of errors and briefs, arguments, and reply on behalf of appellants, as well as the answer on behalf of the appellees, the court delivered the following opinion, to wit:

QUIMBY *et al. vs.* BOYD *et al.*

Appeal from the district court of El Paso county.

W. J. Sharman for the appellants.
Markham, Patterson & Thomas for the appellees.

BECK, *C. J.:*

The first question demanding our consideration is whether the appellants, who were defendants below, were entitled to judgment, notwithstanding the submission of the cause, without objection from them, to a jury for trial and a verdict in favor of plaintiffs, for the reason that the new matter set up in their answer to the complaint was not put in issue by a replication.

Under section 75 of the code of civil procedure, comp. 1883, the defendants were entitled to have every material allegation of their answer taken as true, since no replication was filed thereto.

But counsel for plaintiffs contend that this right was waived by the defendants by their failure at any stage of the trial to call the attention of the court to the fact that no replication had been filed and by their attempt to prove the affirmative allegations of the answer just as if the same had been controverted by a replication.

The truth of the above proposition is denied by counsel for defendants, who affirm that they sought to take advantage of the condition of the pleadings at every stage of the trial; they
215 indignantly repel the insinuation that they themselves overlooked the fact that no replication had been filed, and that they are now raising this specific objection for the first time in this court. As proof to the contrary they refer us to their motion for nonsuit, entered at the close of plaintiffs' direct testimony; their instructions asked and refused, their motion for judgment notwithstanding the verdict, and their motion for new trial.

There can be no question that the answer contained new matter which defendants were entitled to have taken as true, if not traversed by a replication. The complaint charged them with an illegal entry upon the Paymaster lode mining claim, the property of the plaintiffs, and of an unlawful appropriation thereof. The answer denied these allegations and stated affirmatively that the premises in question had long been abandoned and forfeited by failure of the plaintiffs to perform the necessary manual labor required by law, and that at the time of the entry of the defendants the premises comprised a portion of the unoccupied public domain and were subject to relocation. The answer alleges a valid relocation thereof by defendants under the name of the Monticello lode.

In this state of the pleadings, unless the omission to file a replication was capable of being waived and was waived, there was no issue for a jury to try, and the result of the trial must be regarded as of no legal significance whatever. The defendants were entitled to judgment upon their answer, as held by Judge Hallett in Newman *vs.* Newton, 3 Col. L. R., 193. No such judgment was asked, however, but the defendants went to trial just as if the issues were properly made up. We will say further, in this connection,

216 that a critical examination of the entire record leads inevitably to one of two conclusions, to wit, that the fact that no replication had been filed to the answer must have been overlooked by defendants' counsel, or that they must have sought to take advantage of the default without calling the attention of the court and of the opposite counsel to this specific fact. Otherwise, why was not a motion for judgment upon the pleadings interposed in the first instance instead of voluntarily going to trial upon the merits? Why was not the specific defect now relied upon pointed out in the motion for nonsuit, the motion for judgment, notwithstanding the verdict, or the motion for a new trial? And why was not this defect in the pleadings alluded to in the instructions asked for the defendants? That some of the motions so interposed were broad enough to include the defect in the pleadings is not sufficient. The pleadings are not specifically mentioned in any of them, and the only allusion made to the pleadings during the whole course of the trial, so far as we are advised, and this an indefinite allusion, was made by way of objection on part of the defendants to producing evidence in defense upon the overruling of the motion for nonsuit. The only information given about this objection is that it was "to the sufficiency of the pleadings and proofs of the plaintiffs." What the defect was does not seem to have been mentioned.

The only ground assigned in the motion for nonsuit is "for the reason that there is no sufficient evidence to entitle the plaintiffs to recover."

The rule governing motions of this character is that the precise ground of the motion must be stated. As said in Kiler *v.*
217 Kimbal, 10 Cal., 268, the party should lay his finger on the point of his objection; or, as expressed in People *v.* Barnard, 27 Cal., 274, when a nonsuit is moved at the trial the attention of the court and of the opposite counsel should be particularly directed to the supposed defects in the plaintiff's case. Defendants, having elected to rest *his* motion on the ground of insufficiency of evidence, are now estopped to say that it should have been sustained on the ground of a defect in the pleadings.

The two instructions prayed on part of the defendants were based, one on supposed defects in plaintiffs' location certificate, the other upon insufficiency of their evidence to sustain a verdict. No effort to take advantage of the state of the pleadings is discernable here.

Of the eight grounds assigned in the motion for a new trial but one could have reference to the point now insisted upon, viz., because of error in law occurring at the trial and excepted to at the time by the said defendants. The allegation that the error was excepted to shows that it did not relate to a defect in the pleadings, for no ruling appears to have been made or asked concerning the pleadings, and for the same reason no exception was saved to any alleged error of law involving the sufficiency of the pleadings.

The grounds assigned in the motion for judgment, notwithstanding the verdict, are "for the reason that upon the record plaintiffs are not entitled to recover; and, second, for the reason that the plaintiffs failed to prove a sufficient case for the jury."

No error was committed in denying this motion. It cannot be said to have been based on defects in the pleadings, because they are not mentioned. It therefore assumes to be the usual motion for
218 judgment *non abstante veridicto*, but this is not a proper motion to be interposed by a defendant, and the courts say that when so interposed it should not be entertained. In Bradshaw *vs.* Hedge, 10 Iowa, 402, the court say: "A motion *non abstante veridicto* was only entertained by the courts under the former system of pleadings and practice, under a certain state of pleadings and findings by the jury, as when the defendant admitted the material allegations in the plaintiff's declaration, but joined issue upon some immaterial averment which was found by the jury for the defendant. It appears, however, that the courts have never entertained such motion when made by the defendant."

This case holds, and the decision is supported by authorities therein cited, that the proper motion for a defendant, when the verdict is for the plaintiff, is in arrest of judgment.

It is apparent from an inspection of this record that the defendants proceeded in all respects just as they would have done if the issues had been regularly formed. By introducing evidence to prove the affirmative allegations of their answer they treated them as controverted and put in issue, and it is now too late to raise the specific point for the first time that there was no issue to try. The objection has clearly been waived. In support of this conclusion we cite the following adjudications:

In McAllister *v.* Howell, 42 Ind., 16, the court say: "There was no replication filed to the answer; but it has been held in numerous cases that an affirmative answer, where the cause has been tried without a replication, will be deemed to have been controverted on the trial in the same manner as if a replication in denial had
219 been filed."

In Hopkins *v.* Cothran, 17 Kan., 178, the same view is taken. The language of the court is: "Now, it is true that said amended answer was not replied to, but still the case was tried in every respect the same as it would have been tried if a reply had been filed to the amended answer, and therefore we think the defendants waived a reply. * * * The attention of the court below was at no time specifically called to the fact that no reply had been filed to the amended answer."

In California a father sued a railroad company to recover damages for the death of his son, allegod to have been caused by the negligence of the defendant. A written release of all demand for damages was pleaded in bar. In such case it was necessary to deny the allegation by affidavit in order to put it in issue, which was not done; but the plaintiff introduced evidence, without objection, to show that at the time he executed the release he was incompetent to contract, and the case was tried as if the execution of the release had been denied. The plaintiff recovered, and upon error assigned in the supreme court that the verdict and judgment were unauthorized, there being no issue for the jury to try, it was held that the defendant, having permitted the case to proceed as if an issue had

been joined on the execution of the release, would not be allowed to take advantage of the admissions in the pleadings. Crowley *v.* City R. R. C., 60 Cal., 628.

The objection urged in this court for the first time to the form of the verdict is equally without merit. The objection is as follows:

220 "It was error to find a general verdict in favor of plaintiffs against all the defendants for the whole of the premises."

No such objection was made below, aad no such objection is assigned for error. If the irregularity complained of in fact existed, which it does not, the appellants would not be entitled to a reversal of the judgment upon that account. D. S. P. & P. R'w'y Co. *v.* Woodward, 4 Col., 1.

The verdict returned by the jury was: "We, the jury, find for the plaintiffs and that they are entitled to the possession of the premises in controversy, and we further find that the work done in 1880 was worth one hundred dollars."

Three persons are named in the complaint and process as defendants, Quimby, Boon, and Welch, but only two were served with process, Quimby and Boon, and they only appeared and defended the action. The charge made that the verdict is against all of the defendants cannot be sustained. There is not a word in it, as set out in the transcript of the record, that can be construed to include a defendant not served with process and not appearing in the action. The form of the verdict was correct. The parties defending were holding the entire premises from the possession of the plaintiffs, and as against them the plaintiffs, if entitled to recover at all, were entitled to recover the premises generally. Besides, the appellants are in no manner prejudiced by the supposed irregularity. If the verdict could be construed to include defendant Welch, since he is not a party to this appeal, an error prejudicial to him is not available to the appellants. De Lappe *v.* Sullivan, 7 Col., 182; 2 West Coast Rep., 107; Chapman *v.* Pocock, 7 Col., 204; 2 West Coast Rep., 306.

221 Error is assigned to the admission in evidence of the location certificate of the Paymaster lode, the objection being that it did not contain sufficient reference to natural objects and permanent monuments to identify the claim.

The location certificate states that the claim is situated on the crest of Limestone Mountain, about three-quarters of a mile south from the Arkansas river; that the Ben. Bolt lode adjoins the claim on the east, corners four and three of the former being coincident, respectively, with corners one and two of this claim. The bearing of the summit of Banana Mountain therefrom is given, and corner number one is also tied to a tree, as follows: From corner number one a double spruce tree fourteen inches in diameter bears north fifteen degrees east four feet.

The principal objection urged is to the spruce tree, and a letter from the Commissioner of the General Land Office is cited to the effect that a tree should not be considered a permanent natural object as an initial point of a mining claim (Sickel's Mining L. & D., 118). Mr. Wade, in his American Mining Law, page 113, in treating

of the requirement of section 2324 United States Statutes, that the record of a mining claim shall contain such a description, by reference to some natural object or permanent monument, as will identify the claim, enumerates the following as satisfying the requirements, to wit: Stone monuments, blazed trees, the confluence of streams, the point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc. He also says that the names of adjoining claims should be given, if any.

If the views of this writer be correct, it would be an un-
222 warrantable act to declare this location certificate void, as we are asked to do, for want of necessary reference to identify the Paymaster claim.

The words "natural objects and permanent monuments" are general terms, susceptible of different shades of meaning, depending largely upon their application. What might be regarded as a permanent monument for one purpose might not be considered with reference to a different purpose. So of natural objects; they abound everywhere, but their characteristics vary greatly, some being unstable and ephermeral; others fixed and durable, and since only those possessing the latter qualities are suitable for land-marks it is evident that such only were intended by the terms employed in the section referred to. The section of the congressional act wisely omitted to specify particular natural objects or permanent monuments to which references should be made, perhaps for the reason that those most suitable for the purpose might not always be available, and when it is considered that the laws of Congress do not command the filing of location certificates at all, but only provide that when required to be filed by local statutes they should contain such references as will identify the claims, courts should be slow to adjudge a certificate void for uncertainty on account of permanent monuments to which the claim is tied, especially if, in other respects, it be sufficiently identified.

The salutary principle of law, that forfeitures are not favored, is specially applicable in the decision of such questions.

Judge Sawyer's views as to what objects and monuments will satisfy the law, expressed on the trial of the case of the Jupiter Mining
Co. *v.* Brodie Co., 4 Mor. Min. R., 226, '7, are highly instructive
223 upon the point. This eminent jurist observed: "The natural objects or permanent monuments here referred to are not required to be on the ground located, although they may be, and the natural object may consist of any fixed natural object, and such permanent monument may consist of a prominent post or stake firmly planted in the ground or of a shaft sunk in the ground."

Our conclusion, deduced from the foregoing reasons, principles, and authorities, is the objection mentioned to the location certificate is not well taken. A tree is certainly a fixed natural object, and as a monument it is as firmly planted in the ground and as durable as a post or stake; it should be marked in some manner so as to be readily identified, unless it possess peculiarities so different from trees in general that a description thereof is sufficient to identify it; thus marked, naturally or artificially, there would be less room to

question the sufficiency of a tree as a natural object or permanent monument within the meaning of the law than the sufficiency of a shaft sunk in the ground, for unless the latter be timbered it is doubtful whether it could be said to possess the quality of permanency.

The other objection, that the certificate does not state the distance from the discovery shaft to the side lines, merits no consideration, since there is no such requirements in the law; and we come now to the objections urged at the trial below to the admission in evidence of the plaintiffs' title deeds. The deeds were executed without the State of Colorado, the acknowledgments being taken before notaries public, and the principal ground for objection is that the authority of the officers taking the acknowledgments was not
224 shown as the statutes require. This objection is most strenuously insisted upon as fatal to the judgment recovered by the plaintiffs.

Section 21 of the chapter upon conveyances, General Statutes, 176, provides that before a deed executed out of this State before any notary public of any State or Territory of the United States or the record thereof "shall be read in evidence a copy of the commission of such notary, certified by the secretary of the State or Territory under the seal of such State or Territory where such notary was commissioned, shall be recorded in the office of the recorder of the county where the real estate affected by such deed or other instrument in writing is situated." Four of the deeds in question were executed in the county and State of New York and two thereof in the city of Washington, in the District of Columbia. Copies of the commissions of the New York notaries, properly certified, attached, and recorded, were produced in evidence in compliance with the statute.

Two of the New York deeds were acknowledged before T. F. Hascall, notary public, one on the fourth day of February, 1879, and the other the eleventh day of the same month. Hascall's commission as notary public bears date February 20, 1877.

The other deeds executed in the State of New York were acknowledged before E. R. McCarthy, notary public, one on the third day of February, 1879, the other on the fifteenth day of the same month. The latter officer's commission bears date February 14th, 1878. Both commissions purport to be "for the term of two years, ending March 30, 1884."

The point urged as fatal to the judgment is that these com-
225 missions show on their face that the officers taking the acknowledgments were not qualified to act as notaries public at the dates the same were taken, nor for years afterwards. Defendants' counsel argue that any implication to be drawn from circumstances connected with the transaction must be adverse to the authority assumed by these officers, and assert, as conclusive of this inference, that there were conditions annexed to both commissions making their vitality depend upon the future action of the State senate.

The court below overruled the objections made to the admis-

sibility of the deeds upon the theory that the dates appearing in the copies of the commiasions produced upon which the terms of office of these notaries were to expire were clerical errors. There are several considerations which support this theory. In the first place it is a notorious fact that executive commissions are not issued to take effect only after the lapse of years. In the next place the circumstances of the case and the consequences involved show the supposition to be absurd that such was the intention in this case. Here are two instruments bearing the broad seal of the great State of New York by which twenty persons are duly commissioned as notaries public, and because of the insertion in figures of dates on which the terms of office are to end it is gravely contended that ten of these officers are incompetent to take the acknowledgment of a deed for the period of four years and the other ten for a period of five years after the date of their commissions. The form of these commissions is positive and unconditional. The title to the office is conferred and the several officers commissioned are au-
226 thorized to perform the duties appertaining thereto for the term of two years. Were it not that "March 30, 1884," is inserted as the end of the several terms there would exist no plausible ground of objection that Hascall and McCarty were not duly qualified to act as notaries public in February, 1879, when these acknowledgments were taken. This fact alone creates the ambiguities found in these instruments; but the *habendum* clause appearing in a subsequent paragraph of each instrument affords evidence of a right to administer these offices from the date of the commissions. It is as follows: "To have and to hold the said offices, together with the fees, profits, and advantages to the same belonging, for and during the time limited by the constitution and laws of our said State." The commissions are, therefore, not only full and complete, but consistent without the figures which give rise to the ambiguity. Applying the well-known principle of law that ambiguous instruments or acts shall, if possible, be construed so as to have a lawful meaning, we have only to discard the evidently erroneous figures and the meaning becomes at once sensible and consistent. It is a rule that where a deed or other instrument is susceptible of two constructions, one of which the law would carry into effect while the other would be in contravention of some legal principle or statutory provision, the parties will always be presumed to have intended the former. 2 Best Ev., sec. 347.

This construction is strengthened by the fact that these officers assumed to act by virtue of their commissions and by the presumptions which obtain in favor of official acts. A man who acts in a public office is presumed to have been rightfully appointed thereto. 1 Phillips' Ev.,*605; Bank U. S. *v.* Dandridge, 12 Wheat,*70.

227 We regard the position of counsel that conditions were annexed to the commissions, making them dependent for vitality upon the future action of the senate, as without foundation in fact or law. So far as the action of the senate is involved or referred to, that purports to be based upon the past and not upon the future action of that body; it is only in the concluding clause

of each instrument, the function of which is to bear teste that it was issued by authority, that the senate is mentioned, thus: "Witness Lucius Robinson, Governor of our said State (with the consent of our senate), at our city of Albany, the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-seven." The issuing of a commission is the final act which evidences the fact that all necessary steps have been taken to perfect the appointment to office.

When an appointment to office is vested in the President of the United States, by and with the advice and consent of the Senate, the issuing of a commission is held to be conclusive evidence that the appointment has been regularly made; that the consent of the Senate has been obtained, and that the person so commissioned is thenceforth entitled to the rights and privileges of the office. Marsburg *v.* Madison, Secretary, etc., 1 Cranch, *137.

In respect to the deeds executed in the District of Columbia we deem the authentication sufficient. Courts will not presume that the law-making power intended to require an impossibility. Law is founded in reason, and that which is not reason is not law. Section 21 of the statute, which requires a copy of the commission of the notary public, certified by the secretary of the State or Territory wherein such notary was commissioned and the deed
228 executed, refers to organized States and Territories. The political organizations mentioned and intended by this section all have such officers or secretaries of State, but the District of Columbia, wherein two of the deeds were executed, it is admitted, has no such officer; its organization appears to be *sui generis*. It is known, not as a State or Territory, but as a District; and, not having a secretary of State, it cannot be said to be either named or included in the requirements of section 21. Section 13 of the statute makes ample provision for the authentication of the officer's certificate of acknowledgment, in such case by requiring that there be affixed thereto the certificate of a clerk of a court of record. That requirement is duly complied with in three instances by certificates under the hand and seal of the clerk of the supreme court of said District. These deeds, then, being executed in conformity with the statute, were, under the circumstances, properly admitted to be read in evidence.

The only question presented by the entire record upon which we entertain any doubt is whether the evidence sufficiently showed that the annual labor performed by the plaintiffs for the year 1880 was of the value of one hundred dollars.

It is conceded that the jury were correctly instructed upon this point, and they found specially that it was of the value mentioned. The testimony on part of the plaintiffs showed that a contract was let by them for the performance of this labor; that the contract price was one hundred dollars, and that it was a usual and reasonable price for work of that character and extent, when performed under contract. But the defendants' witnesses testified that the actual value of the labor performed was considerably less
229 than one hundred dollars, this testimony being based on the

price *per diem* of day labor in that vicinity, and the time which it would require to perform the work in question. A review of the whole testimony on the subject leads to the conclusion that the finding of the jury on this point can only be reconciled therewith on the theory that some of the witnesses were discredited.

There are several considerations upon the merits favorable to the plaintiffs, and which were, doubtless, before the minds of the jury during the trial. The plaintiffs attempted in good faith to comply with the law. They paid the full sum of one hundred dollars for the work performed, which is the sum required by law to be expended annually to prevent a forfeiture. The work performed was valuable development work, and it was done in a good, workmanlike manner. It consisted of a drift of at least ten feet in length run in upon the vein from a point in the shaft several feet below the surface, this drift being over three feet in width and about six feet in height, the same being properly timbered and logged.

It is probable that testimony could be obtained to show that nearly all the annual assessment work done upon mining claims was of less value than the law required, excepting those instances where it greatly exceeds the sum of one hundred dollars; and while the amount paid is not conclusive that work of that value has been done, but the actual value thereof is the true test whether or not the law has been complied with, yet, where the testimony is conflicting as to the value, it is proper to consider whether there has been a *bona fide* attempt to comply with law.

It is not strange if these considerations had their weight
230 with the jury in such a contest as this, where it was attempted to appropriate the fruits of the mine-owner's improvements and expenditures on the plea of forfeiture by proving their annual labor for a single year to be of less value than one hundred dollars.

It is admitted that there have been three trials of this case—two in the county where the controversies arose and one in another county, to which the cause was removed on change of venue upon application of the defendants, and that three several juries have returned verdicts in behalf of the plaintiffs.

As has often been remarked by this and other courts of last resort, there must be an end to litigation; and, in view of all the circumstances, including the lack of merit in the defense, we do not feel justified in disturbing the judgment in this case. It is therefore affirmed.

And thereby affirming the judgment of the court below in favor said appellees; to which judgment and decision of the court the appellants, by their counsel, then and there duly excepted.

And afterwards, and on the 4th day of April, 1885, the said appellants filed their petition for rehearing in words and figures following, to wit:

Petition for Rehearing.

In the Supreme Court, State of Colorado.

W. M. QUIMBY *et al.*, Appellants,
vs.
J. SCOTT BOYD *et al.*, Appellees. } No. 1160.

231 The petition of W. M. Quimby and John S. Boone, appellants, respectfully shows to this honorable court that there has been manifest error in the consideration and judgment herein, in this, to wit:

First. The court erred in finding that no sufficient objection was interposed in the trial below to the failure of appellees (plaintiffs below) to reply to appellants' (defendants below) answer.

Second. The court erred in holding that a motion *non abstante veredicto* was not the proper motion to be made by the defendants without having fully considered that the defendants were the actors in the case *quo ad*, the relief sought, and therefore the plaintiffs, as to the issue presented by the answer, were in fact the defendants.

Third. The court erred in holding that a tree is a proper natural object to which a mining claim may be tied.

Fourth. The court erred in holding that "the testimony on the part of the plaintiffs showed that a contract was let by them for the performance of the labor," or "that the contract price was one hundred dollars," or "that it was a usual or reasonable price for work of that character and extent when performed under contract."

Fifth. The court erred in declaring that "a review of the whole testimony on the subject leads us to the conclusion that the finding of the jury on this point can only be reconciled therewith on the theory that some of the witnesses were discredited;" whereas there is absolutely no difference between the witnesses for plaintiffs and defendants as to the actual amount of work done, and hence
232 no room to discredit either without rejecting the entire testimony on the subject.

Sixth. The court erred in declaring that the plaintiffs attempted in good faith to comply with the law; that they paid the sum of one hundred dollars; that the work done was valuable development work; that it was done in a good, workmanlike manner, or that any of these things were proper to be considered by the jury in determining whether the requisite amount had been done.

Seventh. The court erred in announcing that the fact that inasmuch as many claims are developed yearly to more than the extent of one hundred dollars in value, and it is probable that testimony could be obtained to show that nearly all the annual assessment work done upon mining claims was of less value than the law required, excepting more instances where it greatly exceeds the sum of one hundred dollars," as a proper consideration for the jury in arriving at the determination of whether the proper amount of work was done in any particular year and on any particular claim.

Eighth. That the court erred in holding that such considerations should have had weight with the jury.

Ninth. The court erred in giving undue weight to the fact that there had been three jury trials of this cause without giving due heed to the facts under which the said three trials were had.

Tenth. The court erred in declaring that there was a lack of merit in the defense.

Eleventh. In the opinion the court has expressed divers
233 propositions of law touching the true test of the value of annual labor to be done on any one claim in each year which are misleading, in that they are not sufficiently definite to guide one in an accurate compliance with the law.

Wherefore appellants pray the court that they may have a rehearing of the cause, and that time may be granted them wherein to present fully their reasons therefor.

W. J. SHARMAN,
Att'y for Appellants.

And on the 25th day of April, 1885, the said appellants filed their supplemental petition for rehearing in said cause, which said supplemental petition was, by consent of counsel and order of court, filed *nunc pro tunc* as of the 4th day of April, A. D. 1885, and is in words and figures following, to wit:

In the Supreme Court, State of Colorado.

W. M. QUIMBY *et al.*, Appellants,
vs.
J. SCOTT BOYD *et al.*, Appellees.
} No. 1160.

Now come the said appellants, and, by leave of court first had and obtained, file this their supplemental petition for rehearing, and thereupon they respectfully show to the court that there was error in holding—

1st. The plaintiffs' location certificate to be valid, whereas it failed to state the number of feet claimed on either side of the discovery shaft or middle of the vein.

2d. That the location of plaintiffs was valid, whereas it was at-
tempted to be made for surface ground on one side in ex-
234 cess of the amount allowed by law, to wit, 267 feet instead of 150 feet, and no boundaries were set on one side within the legal limits.

Respectfully submitted.

W. J. SHARMAN, with whom is
M. L. RICE, *Att'ys for Appellants.*

And thereupon said petition for rehea ring and said supplemental petition for rehearing were argued and submitted to the court, and the court, on the 12th day of June, 1885, denied said petition and supplemental petition for rehearing and delivered the following opinion:

QUIMBY *et al.*, Appellants, *vs.* BOYD *et al.*, Appellees.

Appeal from district court of El Paso county.

Per curiam: Upon consideration of the petition for rehearing of this cause and the points urged in the oral arguments thereon the court is of opinion that the application should be denied.

As stated in the opinion, the only question about which we entertained any doubt was the sufficiency of the testimony to support the verdict of the jury as to the performance of the annual labor required by law for the year 1880, and we are still of opinion, in view of the whole testimony and the repeated verdicts for the plaintiffs, that we would not be warranted in reversing the same upon that ground.

While the testimony of the plaintiffs below was mainly directed to the point that the price paid for the work performed was
235 a reasonable price for work of that character and extent when done on contract, yet there was some evidence tending to show its actual value, and that came up to the legal standard.

We are still of opinion that there is no force in the objection urged against the validity of the location of the Paymaster claim.

Rehearing denied.

To which judgment and opinion of the court the appellants, by their counsel, then and there duly excepted.

And inasmuch as the above matters do not fully appear of record in said cause the appellants tender this their bill of exceptions, which they pray the court to sign and seal and order the same to be made part of the record in this cause.

All of which is accordingly done this 17th day of June, A. D. 1885.

WM. E. BECK, [SEAL.]
Chief Justice.

There is no objection to the signing and sealing of this bill of exceptions by the chief justice as of June 17th, A. D. 1885, although we do not think it necessary.

PATTERSON & THOMAS.

Endorsed: Quimby *et al.*, appellants, *vs.* Boyd *et al.*, appellees. Bill of exceptions. Filed in supreme court Oct. 5, 1885. James A. Miller, clerk.

236 STATE OF COLORADO, *ss:*

Supreme Court.

I, James A. Miller, clerk of the supreme court of the State of Colorado, hereby certify the foregoing to be a true and complete copy of a duly certified transcript of the record and proceedings of a certain cause lately pending in the district court of El Paso county and State aforesaid, wherein J. Scott Boyd, Jr., *et al.* were plaintiffs and W. M. Quimby *et al.* were defendants, filed in our supreme court upon appeal from the judgment of said district court by said defendants, with their assignments of error appended thereto, as also

all proceedings had in said supreme court upon said appeal, save and except the rules entered in said cause for the filing of abstracts of record and briefs by the respective parties, together with the complaint for writ of error from supreme court of the United States, allowance thereof, and the cost bond and power of attorney for executing same, and the approval of said bond, and appellants' bill of exceptions, all of which remain of record and on file in said cause in my office.

Witness my hand and the seal of said court, hereto affixed, at my office, in the city of Denver, this 5th day of October, A. D. 1885.

[Seal Supreme Court, State of Colorado.]

JAMES A. MILLER,
Clerk Supreme Court, State of Colorado.

Endorsed on cover: Colorado sup. court. No. 392. W. M. Quimby and J. S. Boon, plaintiffs in error, *vs.* J. Scott Boyd, Jr., Richard T. Haines, Judson Bent, *et al.* Filed October 14, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 121.

W. M. QUIMBY and JOHN S. BOON,

PLAINTIFFS IN ERROR,

vs.

J. SCOTT BOYD, JR., et al.

In Error to the Supreme Court of the State of Colorado.

Motion to Dismiss, with which is united a Motion to Affirm.

GEORGE A. KING,
Attorney for Defendants in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1888.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

W. M. QUIMBY AND JOHN S. BOON.
PLAINTIFFS IN ERROR,

v.

J. SCOTT BOYD, JR., RICHARD T. HAINES, JUDSON BENT, JOHN HULBERT, JOHN P. RISQUE, ALEXANDER H. RICE, WILLIAM ROBERTS, KATE MAGRUDER, JOSEPH W. BORDEN, JOHN W. CORSON, HARMON W. HENDRICKS, HENRY D. COOKE, JR., AND ALEXANDER F. MAGRUDER.

No. 121.

MOTION TO DISMISS, WITH WHICH IS UNITED A MOTION TO AFFIRM.

Now come the defendants in error, J. Scott Boyd, Jr., and others, as above named, and move the court to dismiss the writ of error in this cause for want of jurisdiction—

1. Because no Federal question is involved in the record.

2. Because if any Federal question is involved in the record, the decision of the State court was *in favor of*, and not *against*, the title, right, privilege, or immunity

claimed under the Constitution and laws of the United States.

And the defendants in error, in pursuance of rule 6, section 5, of the rules of this court, also move the court, in case of denial of the motion to dismiss, then that the judgment of the supreme court of the State of Colorado be affirmed on the ground that although the record may show that this court has jurisdiction, it is manifest the writ of error was taken for delay only, and that the question on which the jurisdiction of this court depends is so frivolous as not to need further argument.

GEORGE A. KING,
Attorney for Defendants in Error.

BRIEF.

1. *On Motion to Dismiss.*

This action was commenced August 19, 1881, in the district court of Chaffee county, Colorado, by J. Scott Boyd, Jr., and others, defendants in error herein, against W. M. Quimby, John S. Boon, and Jacob Welch for the recovery of a certain lode and mining claim known as the Paymaster Lode, situated in the Monarch Mining District in Chaffee County, Colorado, which plaintiffs alleged had been located in 1878 by one William P. Shepherd, from whom they purchased, and which they alleged had been duly located by said Shepherd under the mining laws of the United States, and upon which, as they alleged, the defendants had unlawfully entered.

Complaint, pp. 7–9 of record.

The answer of the defendants, Quimby and Boon, Welch not being found (page 10), denied the allegations of the complaint, and alleged that the plaintiffs had failed and

neglected to perform the amount of labor required by the mining laws of the United States, and had thus abandoned their claim, and that the defendants thereupon entered upon the claim, and relocated the same under the name of the Monticello Mining Claim, and they, therefore, claimed the possession of the same, and asked an injunction against the plaintiffs from disturbing such possession.

The case was removed by change of venue to the district court of El Paso county, Colorado, and was there tried before a jury.

The bill of exceptions contains the entire testimony given in the case (pp. 18–113). It also contains the charge to the jury (pp. 113–115). The verdict and judgment were in favor of the plaintiffs, and upon appeal to the supreme court of the State the judgment was affirmed. The opinion of the supreme court is contained in the record (pp. 127–135), as well as a supplemental opinion upon petition for rehearing (p. 138).

A writ of error for the removal of the case to this Court was allowed by the supreme court of Colorado and issued, and the record, in compliance with section 997 of the Revised Statutes, contains an assignment of errors, page 1, the errors assigned being five in number, to wit:

1. In deciding that under section 2324 of the Revised Statutes of the United States a tree was a proper "natural object or permanent monument" sufficient to "identify the claim."

2. In deciding that the record of the mining claim of the plaintiffs (defendants in error), 300 feet wide by 1500 feet in length, "was valid, without reference to the vein or its relative position to the boundaries."

3. In deciding that the original locator of the mining claim held by the defendants in error might, in marking the boundaries of the claim, take 33 feet on one side of

the centre of the vein and 267 feet on the other side, making in all 300 feet, on the ground that in the Monarch Mining District, Chaffee county, Colorado, claims are limited to 150 feet on each side of the centre of the vein.

4. In deciding that the annual labor performed by defendants in error on their claim for the year 1880 "should not be measured by its actual value when done, but by a speculative value in advance."

5. The fifth is a mere general assignment that the judgment was given for the wrong party.

Some of these assignments of error are, in our judgment, incorrect, and not warranted by the record, but we think the court will perceive on examination that no Federal question is really involved in any single one of them.

The first assignment purports to be based upon that portion of section 2324 of the Revised Statutes which provides that:

"All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."

It can hardly be doubted that a tree, when properly described, is a "natural object" which will identify a description; but in this case the certificate of location (pp. 29, 30 of the record), not only describes the tree specifically but further identifies the claim by reference to the bearings of a mountain peak (Banana Mountain) in the vicinity. The views of the supreme court of Colorado on this question are contained in its opinion (see pp. 130–132 of record), to which we refer the Court.

But the question on the motion to dismiss, after all, is whether the question of the sufficiency of the description

constitutes a question of Federal law authorizing a writ of error to a State court.

In the case of *Eilers* v. *Boatman*, 111 U. S. 356, this Court held that the question whether "the notice of the location of the Nabob Mining Claim contained a sufficient description by reference to natural objects and permanent and well-known monuments to identify the same" presented a mere question of fact, and not one of law, and was, therefore, not reviewable on appeal from a territorial court. Much less can such a question of fact be re-examined by this Court on writ of error to a State court in an action at law tried by jury.

It is worthy of note also that, as the supreme court of Colorado expresses it (p. 131), "The section of the Congressional act wisely omitted to specify particular natural objects or permanent monuments to which references should be made, perhaps for the reason that those most suitable for the purpose might not always be available;" also, that "the laws of Congress do not command the filing of location certificates at all, but only provide that when required to be filed by local statutes they should contain such references as will identify the claims." Clearly, therefore, this question, if a question of law at all, is one of State, not of Federal law, which this Court cannot consider on writ of error to a State court.

The second assignment of error is that "the court erred in holding and deciding that the record of plaintiffs' mining claim 300 feet wide by 1500 feet in length was valid, without reference to the vein or its relative position to the boundaries."

At no stage of the case in the State courts was it denied that the plaintiffs' claim followed in its length the general course of the vein, or that the side lines were substantially parallel with, and the end lines at right angles to, the vein.

Inasmuch, therefore, as it nowhere appears that this question was raised below, either in the trial court or the supreme court of the State, this is of itself a sufficient ground for dismissing the writ of error, so far as this assignment of error is concerned. *Susquehanna Boom Co.* v. *West Branch Boom Co.*, 110 U. S. 57; *Simmerman* v. *Nebraska*, 116 U. S. 54.

The third assignment of error raises a question purely of State and local law, and therefore need not be here considered, as it is wholly inadmissible as a ground for reversal of the judgment of the State court, for it will hardly be contended that section 2324 by referring to mining regulations and State laws makes every ruling of a State court on the subject of such laws or regulations a proper subject of review by this court.

It has always been held in the United States circuit courts that where the only questions to be litigated in suits to determine the right to mining claims are as to what are the local laws, rules, regulations, and customs by which the rights of the parties are governed, and whether the parties have, in fact, conformed to such local laws and customs, the courts of the United States have no jurisdiction of the cases under the provisions of the act giving jurisdiction in suits arising under the Constitution and laws of the United States. *Trafton* v. *Nougues*, 4 Saw. 178. Of course the same objection would hold equally good to the jurisdiction of this court to re-examine questions of that character by writ of error to a State court under section 709 of the Revised Statutes. *Romie* v. *Casanova*, 91 U. S. 379; *McStay* v. *Friedman*, 92 U. S. 723; *Hoadley* v. *San Francisco*, 94 U. S. 4.

The fourth assignment of error is to an alleged ruling of the trial court that the annual labor performed by the plaintiffs on their claim for 1880 "should not be measured

by its actual value when done, but by a speculative value in advance." This is not an accurate statement of the ruling made, which was this:

1. In overruling an objection to the following evidence given on behalf of the plaintiffs by John Hurlburt, a witness called in their behalf (pp. 113, 120):

"Q. Did you pay for this work?
"A. Yes, sir.
"Q. How much did you pay?
"A. A hundred dollars."

2. The following portion of the charge of the court relating to the subject of the value of the work done (pp. 114, 115):

"If you find from the evidence that plaintiffs or their grantors made a valid location of the premises in controversy by a full compliance with the law as aforesaid, and that during the year 1880 they performed or caused to be performed thereon $100 worth of labor, or placed thereon improvements of that value, or placed thereon work and improvements aggregating $100 in value, you will find for the plaintiffs.

* * * * * *

"You are instructed that the question whether the required annual labor or improvements of the value of one hundred dollars was performed or made on the Paymaster claim in A. D. 1880 is to be determined by the actual value of the labor or improvements, considering the reasonable cost of labor and materials in that section and at that time, and not by what, if anything, the plaintiffs paid to Thomas White therefor; an affidavit that such assessment work was done is only *prima facie* evidence of that fact and may be overcome by oral testimony to the contrary.

"If you find for the plaintiff you will answer in writing the following question:

"What was the actual value at the time when done of

the labor performed and improvements made on the Paymaster claim during the year 1880?"

It is submitted that neither the admission of the evidence objected to nor the instructions of the court, which were certainly as favorable to the defendants as they had a right to claim, raise any question whatever of Federal law. The question whether the plaintiffs performed one hundred dollars' worth of work on the mine was a mere question of fact for the jury; and the correctness of the instructions as to the mode of estimating the value of the labor presents a mere question of general law, having no relation to any authority claimed under any statute of the United States.

The fifth assignment of error is a mere general complaint that the judgment was given for the defendants in error, whereas it ought to have been given for the plaintiffs in error. This assignment of error cannot be regarded as of any greater force or effect than a general summary of the previous specific assignments.

Taken as a whole the Court will perceive that even if any of the several assignments of error present any Federal question at all, they refer to rulings of the court *sustaining* the "title, right, privilege, or immunity" claimed by the defendants in error under the statutes of the United States, and did not touch the question of the validity of the subsequent location made by the plaintiffs in error. The case throughout, as is apparent from the record, turned upon the validity of the location of the Paymaster Lode by the plaintiffs (here defendants in error) under the mining laws of the United States; and as the whole decision was in favor of the validity of that location, the present plaintiffs in error, who were mere intruders upon their location, cannot complain of rulings of the State

court sustaining the validity of the location, even though the questions thus raised and decided were questions of Federal law.

To authorize a review by this Court of the judgment of a State court on writ of error, sec. 709 of the Revised Statutes requires that the decision of the State court shall have been "*against* the title, right, privilege, or immunity" set up under the laws of the United States. Where the decision is *in favor of* such title, right, &c., the Supreme Court has no jurisdiction. *Ryan* v. *Thomas*, 4 Wall. 603.

For these reasons it is submitted that this Court is without jurisdiction to review the judgment of the supreme court of Colorado and the writ of error should be dismissed.

2. *On Motion to Affirm.*

But if the motion to dimiss is denied, it is clear that the questions on which the jurisdiction of the Court depends are too frivolous to need further argument.

The reference to the tree as a proper natural object to identify the claim, coupled with the reference to the mountain peak, as set forth in the location certificate, pp. 29, 30, constitutes a clear and sufficient description under the requirements of section 2324. The very full discussion of this question by the supreme court of Colorado (pp. 130–132) obviates the necessity of more extended remark on this subject on the present motion, but we may refer to the fact that descriptions of a much less specific character have been upheld by this Court in similar cases. Take, for instance, the case of *Glacier Mining Company* v. *Willis*, 127 U. S. 471, where this Court sustained a description of a tunnel as follows (p. 480):

"Commencing at the base of said Glacier Mountain east of Bear Creek, and running southeast and parallel

with Coley tunnel through said mountain five thousand feet from the mouth of starting point of said tunnel, at a stake marked and in or at the mouth of said Silver Gate tunnel, and two hundred and fifty feet northeast and two hundred and fifty feet southwest from said stake or tunnel to its termination."

Descriptions of mining claims made in much less certain language have been sustained by the State courts.

Meyers v. *Farquharson*, 46 Cal. 190.

To use the language of the judge of the trial court (p. 29): "The claim is tied to a spruce tree fourteen inches in diameter; if it is marked, it is a sufficient tie; if it is not marked, that in itself is not a sufficient tie; but it is tied to a certain mountain peak the bearings of which are given, and it is described with reference to a stream. The thing which makes the tie effective, I think, is the reference to the mountain peak."

Again, it is equally clear that the second assignment of error cannot be sustained. No question was raised in the State court but what the location of the defendants in error followed in its length the general course of the vein, and that the side lines thereof were substantially parallel with, and the end lines at right angles to, the vein. *Mining Co.* v. *Tarbet*, 98 U. S. 463.

Plaintiffs in error virtually admitted this, for when they undertook to "jump the claim" of these defendants in error, they laid their own location in substantially the same direction. (See plat opposite p. 84.) The two claims are co-extensive with each other with the exception of two small corners.

The third assignment is equally without merit, as the act of Congress, section 2320, only limits the claim to 300 feet on each side of the middle of the vein at the surface,

and if State laws and mining regulations impose a still further restriction the construction of those laws and regulations certainly involves no question of Federal law. It is sufficient, so far as this court is concerned, that the act of Congress was complied with. The entire claim in this case was only 300 feet wide.

With reference to the fourth assignment of error, touching the annual labor performed by defendants in error on their claim for the year 1880, we refer to the foregoing statement of the evidence showing directly the actual payment of $100 for the work during that year, and to the second, fifth, and sixth instructions of the trial court, pages 114, 115, to show that the court stated the law on this subject in a manner quite as favorably to defendants (plaintiffs in error) as they had any right to claim. We also refer to the special finding of the jury on this subject, contained in their verdict, and which shows that the actual value of the labor performed on the mine during that year was expressly found by the jury to be the full amount required by the statute. The verdict is in these words (pp. 115, 116):

"We, the jury, find for the plaintiffs, and that they are entitled to the possession of the premises in controversy, and we further find that the work done in 1880 was worth $100."

This completes the examination of the assignments of error in this case, and will, we think, demonstrate to the Court the frivolous character of the grounds relied upon for reversal of the judgment—so trifling, indeed, that further argument on them would only uselessly occupy the attention of the Court, and should lead to an affirmance of this judgment on motion, even if it be held that the Court has jurisdiction.